The Central Law Journal.

ST. LOUIS, MARCH 1, 1889.

CURRENT EVENTS.

THE subject of the leading article in this issue—"Constitutionality of Registry Laws"—suggests a few thoughts, which it would be well for legislators, who are casting about for effective election laws, to consider. In a recent number of this JOURNAL, we reviewed the Australian system of voting, which is the basis for most of the proposed enactments in this country, and the cardinal features of which are, as pointed out by us, compulsory secret voting, and official ballots prepared by the government. These innovations are wise, and tend, in a large measure, to correct some of the admitted evils of the old system, such as bribery, intimidation, and improper influence of a voter. But are these all the evils, to which our system of voting has given birth? In the first place, a wise, and effective registration law (in cities at least), is as important, as a reform in the manner of depositing the ballot. For, without the former, the latter will be of little use. It accomplishes nothing, in the desired direction, to secure to a voter freedom from violence, intimidation, or interference, or to remove him from the impossibility of bribery, if that voter has no right to vote, or, if by fraud, his name appears upon the registration lists. Nor does it conduce to a satisfactory election, to secure the fullest, fairest, and freest expression of choice, on the part of those, whose names appear entitled to vote, where, by accident, or design, a considerable number of names of legal voters have been left off the official poll list. Therefore, we need wise registration laws, so framed, as to prevent the registration of those not entitled to vote, and to secure the registration of all who have the right of suffrage, and who have complied with the requirements of the registry act; and this beyond the power of partisans, to destroy by dropping their names from the official list. In another feature, it seems to us, that the Australian system does not provide a remedy. Though the registry of voters may be strictly accurate, and contain a true list of those entitled to vote; though the election may be free from bribery, or intimidation, and the ballots, that go into the box, absolutely represent the free choice of the voters, what security is provided against a false count, or miscount, on the part of judges of election? What is to prevent a destruction of ballots? A fraudulent count of ballots is even worse, and may be more serious, in its results, than bribery. Again, an effective election law should provide against a possible tampering with the returns, after they have left the returning officers, and when on the way to, or actually in the custody of, the officer whose duty it is to receive them.

These are all questions, which must be met in the consideration of the subject of a reform of election laws, and it is to be hoped that the many legislatures, now engaged in the work, may realize the great importance of guarding against fraud or errors at every step.

IT will be interesting to note the opinion of the Supreme Court of the United States which may shortly be expected, in the Mormon church case, recently submitted to them. The case is of interest, not only on account of its social significance, but also by reason of the novel and important questions of law involved. To be strictly accurate, it is a suit brought by the United States against "The Late Corporation of the Church of Jesus Christ of Latter Day Saints" in the Supreme Court of the Territory of Utah, wherein, under and by authority of acts of congress, passed in 1862 and 1887, judgment was rendered against defendants, escheating all the personal property belonging to the above corporation and declaring forfeited all its real property. The acts of 1862 and 1887, were intended to repeal former acts of congress, under which defendants obtained legal existence and acquired the right to own property, etc., in so far as they established and countenanced polygamy, and they also declare the corporation, by reason of such acts, dissolved and its property forfeited and escheated to the United States, granting authority to the attorney general to institute proceedings to wind up its affairs, in the hands of a receiver.

The contention made by the Mormon church and its adherents is, in effect, that the acts under which proceedings were instituted are unconstitutional, in so far as they attempt to dissolve the corporation or purport to forfeit or escheat the property of defendants; that the charter granted the latter in 1851 as a corporation for religious and charitable purposes was a contract, which, by its acceptance, became an executed contract; that, relying thereon, it had acquired valuable property, and that it was without the power of congress to thus destroy and take away vested rights of the defendant. Though the admission is made that so far as political rights are concerned congress is supreme in its legislative power over the Territories, and may to-day pass a law in the direction indicated which to-morrow they may repeal or effectually change; but when it comes to civil rights, congress cannot violate those fundamental principles of the constitution by which the personal rights of every citizen are guarded. This was the doctrine announced by the supreme court in the Sinking Fund cases. It is claimed, therefore, that congress had not the power to annul a charter of incorporation previously granted by it. While it is conceded that the clause of the United States constitution which says that no State shall pass any law impairing the obligation of contracts, does not apply to congress, yet it is claimed that the principles which underlie it do apply to that body and that congress, when it has granted a franchise or given a tract of land cannot take it back. Furthermore, it is contended that there is no such thing known to the jurisprudence of the United States as the doctrine of escheat and forfeiture under which defendant's property has been taken. It is conceded that only a small proportion of the Mormons actually practice polygamy, while on the other hand the religious and charitable features of the corporation are many and praiseworthy, and hence, the question is asked, should ninety-nine persons out of one hundred be despoiled of their property because of the practices of the other individual? Indeed, the legal position taken by the defendants on the question of vested rights, goes to the full length of the question as to whether there is any law which would authorize the escheat to the government of property because of the moral delinquences of the parties who happen to own it.

We shall look eagerly for the decision of this case, involving, as it does, personal and vested rights of property, and the existence, continuance and permanency of a social system, which has rights and probable merit, independent of its immoral features, though the latter has secured its condemnation, and are a menace to our institutions

NOTES OF RECENT DECISIONS.

An important case, involving the question as to the power of a United States court in equity to set aside the orders of a State court, is Arrowsmith v. Gleason, 9 Sup. Ct. Rep. 237, recently decided by the Supreme Court of the United States. The proceeding sought to be annulled was the order of a probate court of Defiance county, Ohio, for the sale by a guardian of his ward's real estate. The bill filed herein, in behalf of the minor, alleged various grounds of fraud and collusion in obtaining the order and sale thereunder by which the land was sold at a grossly inadequate price, and that defendant fraudulently obtained confirmation of the sale, and prayed that it and the deed be vacated. Defendant demurred upon the ground (1) that plaintiff had an adequate remedy at law; (2) that the circuit court of the United States was without jurisdiction to make such a decree. The court says:

If by this is meant only that the circuit court cannot by its orders act directly upon the probate court, or that the circuit court cannot compel or require the probate court to set aside or vacate its own orders, the position of the defendants could not be disputed. But it does not follow that the right of Harmening in his life-time, or of his heirs since his death, to hold these lands, as against the plaintiff, cannot be questioned in a court of general equitable jurisdiction upon the ground of fraud. If the case made by the bill is clearly established by proof, it may be assumed that some State court of superior jurisdiction and equity powers, and having before it all the parties interested, might afford the plaintiff relief of a substantial character. But whether that be so or not, it is difficult to perceive why the circuit court is not bound to give relief according to the recognized rules of equity, as administered in the courts of the United States, the plaintiff being a citizen of Nevada, the defendants citizens of Ohio, and the value of the matter in dispute, exclusive of interest and costs, being in excess of the amount required for the original jurisdiction of such courts. A leading case upon this point is Payne v. Hook, 7 Wall. 425, 430. That was a suit, in the cir-

cuit court of the United States for Missouri, by a citizen of Virginia, against a public administrator, to obtain a distributive share of an estate then under administration in a court of Missouri. It was objected that the complainant, if a citizen of Missouri, could obtain redress only through the local probate court, and that she had no better or different rights by reason of being a citizen of Virginia. But this court, observing that the constitutional right of the citizen of one State to sue a citizen of another State in the courts of the United States, instead of resorting to a State tribunal would be worth nothing if the court in which the suit is instituted could not proceed to judgment and afford a suitable measure of redress, said: "We have repeatedly held that the jurisdiction of the courts of the United States, over controversies between citizens of different States, cannot be impaired by the laws of the States which prescribes the modes of redress in their courts, or which regulate the distribution of their judicial power. If legal remedies are sometimes modified to suit the changes in the laws of the States and the practice of their courts, it is not so with equitable. The equity jurisdiction conferred on the federal courts is the same as that the high court of chancery in England possesses; is subject to neither limitation or restraint by State legislation, and is uniform throughout the different States of the Union. The circuit court of the United States for the district of Missouri, therefore, had jurisdiction to hear and determine this controversy, notwithstanding the peculiar structure of the Missouri probate system, and was bound to exercise it, if the bill, according to the received principles of equity, states a case for equitable relief. The absence of a complete and adequate remedy at law is the only test of equity jurisdiction, and the application of this principle to a particular case must depend on the character of the case as disclosed in the pleadings." While there are general expressions in some cases apparently asserting a contrary doctrine, the later decisions of this court show that the proper circuit court of the United States may, without controlling, supervising, or annulling the proceedings of State courts, give such relief, in a case like the one before us, as is consistent with the principles of equity.

A PECULIAR phase of the question, as to the right to recover on an illegal contract, was before the Supreme Court of Indiana, in the case of Pape v. Wright, 19 N. E. Rep. 459. There, the owner of a patent right employed plaintiff to procure purchasers for it, agreeing to pay him a commission therefor. Copies of the letters patent had not been filed with the clerk of the county court, nor had affidavits of genuineness been made, as required by Indiana statute, before offering a patent for sale. Plaintiff found purchasers to whom defendant sold, and plaintiff now sues for his commission. The defense contends that, as the defendant had no right, under the law, to sell, his contract with plaintiff was unlawful. Elliott, C. J., in overruling this defense insists that the plaintiff was a "middleman," whose office was to bring the parties together, leaving to them the consummation of the sale, and he does not sell, or offer to sell, but simply sets in train preliminary negotiations. If a middleman is entitled to compensation when he procures a purchaser, then he can enforce his contract, notwithstanding the fact that his employer violates the law, for its enforcement does not require that he shall bring to his assistance the illegal contract of selling or offering to sell patented articles. The rule upon the general subject is, that a recovery may be adjudged whenever it can be reached without the aid of an illegal contract. Louisville v. Buck, 19 N. E. Rep. 453; Sondheim v. Gilbert, 18 N. E. Rep. 687;[1] Bank v. Bank, 16 Wall. 483. The court concludes:

Closely analyzing the pleadings, and recapitulating somewhat, we shall find these elements present: That the undertaking was to find a purchaser; that the appellee had no knowledge of any intention on the part of his employer to violate the law; that the employer has had the benefit of the appellee's services, and that a recovery may be enforced without validating the illegal acts of the appellant. These elements are important, for they discriminate the case from that of an agent joining with his principal in a known illegal act. They mark it as a case where the principal is seeking to use his own wrong to escape payment for services rendered at his request, and they prove it to be a contract not blended with the illegal conduct and purpose of the wrong-doer. The question is not, what are the rights of the public as against the appellee, but the question is as to the rights of a principal, upon whom, chiefly and primarily, rested the duty of performing the acts required by the law, as against a middleman who has done what the principal employed him to do. Proceeding upon the general principles we have stated, and guided by the authorities we have cited, our course, if we keep in the straight path marked out by them, would lead us, even without decisions more directly in point, to the conclusion that the answer is bad. But our search for direct decisions has not been unrewarded, for we have found cases strongly in point. See Crane v. Whittemore, 4 Mo. App. 510; Curtis v. Gokey, 68 N. Y. 304; Ormes v. Dauchy, 82 N. Y. 443. We do not, of course, question the soundness of the general rule that one who contracts to do an illegal act, or to aid in doing a wrong cannot recover compensation for his services. On the contrary we affirm as strongly as possible the justice of that rule, but we quite as strongly deny its applicability to such a case as is here presented by the pleadings properly before us. To apply the general rule to a case like this would result in constituting every broker a censor and guardian of his employer, and, in every case where the subject of the sale was a patented right, impose upon him the duty of ascertaining that his employer was not a law-breaker, and all for the benefit of the employer, who repudiates his obligation, and endeavors to get the benefit of his broker's services without paying him any compensation.

[1] See this case, annotated, on p. 213 of this issue.

IN Sharp v. Sharp, 10 S. W. Rep. 228, the Supreme Court of Arkansas decide an in-

teresting question in the law of homicide. It is there held, after a careful review of the authorities, that one who wilfully and unlawfully inflicts upon another a wound, not in itself mortal, though dangerous, and death ensues therefrom, is guilty of murder, though it may appear that the deceased might have recovered but for the maltreatment of the physician who attended him. The court says:

The principle on which this rule is founded is one of universal application, and lies at the foundation of all our criminal jurisprudence. It is that every person is to be held to contemplate and to be responsible for the natural consequences of his own acts. If a person inflicts a wound with a deadly weapon in such manner as to put life in jeopardy, and death follows as a consequence of this felonious and wicked act, it does not alter its nature or diminish its criminality that other causes co-operated in producing the fatal result. Indeed, it may be said that neglect of the wound, or its unskillful and improper treatment, which were of themselves consequences of the criminal act, which might naturally follow in any case, must in law be deemed to have been among those which were in contemplation of the guilty party, and for which he is to be held responsible. But, however this may be, it is certain that the rule of law, as stated in the authorities, has its foundation in a wise and sound policy. A different doctrine would tend to give immunity to crime, and take away from human life a salutary and essential safeguard. Amid the conflicting theories of medical men, and the uncertainties attendant on the treatment of bodily ailments and injuries, it would be easy, in many cases of homicide, to raise a doubt as to the immediate cause of death, and thereby to open a wide door by which persons guilty of the highest crime might escape conviction and punishment. See 1 Russ. Crimes (7th Am. ed.), 505; Rosc. Crim. Ev. (3d ed.) 703, 706; 3 Greenl. Ev. § 139; Com. v. Green, 1 Ashm. 289; Reg v. Haines, 2 Car. & K. 368; State v. Baker, 1 Jones (N. C.), 267; Com. v. McPike, 3 Cush. 184; Com. v. Hacke', 2 Allen, 141; Reg v. Holland, 2 Moody & R. 351; State v. Morphy, 33 Iowa. 270; Smith v. State, 8 S. W. Rep. 941.

The Supreme Court of Nebraska, in Huff v. Slife, 41 N. W. Rep. 289, decided a question as to negotiable instruments, upon which the decisions of courts are not uniform and cannot be harmonized. It was there held that one who, before maturity, guarantees the payment of a promissory note becomes absolutely liable upon default of the maker, and that no notice of nonpayment or demand is necessary in order to charge such guarantor, and that the neglect to sue the maker does not discharge the guarantor, although the maker becomes insolvent. The court, after citing Humphford v. O'Brien, 34 N. W. Rep. 161; Brown v. Curtiss, 2 N. Y. 225; Roberts v. Riddle, 79 Pa. St. 468; Roberts v. Hawkins (Mich.), 38 N. W. Rep. 575; Fuller v. Tomlinson (Iowa), 12 N. W. Rep. 127; Clay v. Edgerton, 19 Ohio St. 549; Allen v. Rightmere, 20 Johns. 364, says:

These cases go upon the theory that the guaranty is absolute and unconditional and not like the conditional contract of indorsement, which is to pay on demand being made on the maker, and notice of dishonor given to the indorser in case payment is not made by the maker. In Brown v. Curtiss, *supra*, Judge Bronson, in delivering the opinion of the court, says that "in such cases the guarantor is neither the maker nor indorser of a promissory note. On the contrary, he has in very plain terms made a contract of a different kind from either of those—one well known to the law—and by that contract he must either stand or fall. He has guaranteed the payment of G. F. Brown's note, and we have no right to turn that contract into one of a different kind. This is so plain a principle that it would seem to be enough to mention it without saying anything more." But the writer of that opinion enters upon a thorough discussion of the question, in which a great number of cases are cited and considered. In Clay v. Edgerton, *supra*, Chief Justice Brinkerhoff, in writing the opinion, says: "We are aware that cases may be found in which the point has been ruled otherwise, but it seems to us that the reasoning of Bronson, J., in Brown v. Curtiss, *supra*, is unanswerable and irresistible." The latter case was one in which, as in this, the holder of a promissory note transferred it, and indorsed thereon the following: "I guarantee the payment of the within note to C. Edgerton or order. Isaac Clay." It was held that this was an absolute and unconditional guaranty, and no affirmation in the petition of demand and notice was requisite to make a *prima facie* case for recovery upon it. This case would dispose of that portion of the answer of plaintiff in error which seeks to defend upon the ground that no demand had been made, nor notice given of non-payment. In Allen v. Rightmere, Chief Justice Spencer, in delivering the opinion of the court, which was in a case similar to the one at bar, says: "The undertaking here is not conditional. It is absolute that the maker shall pay the note when due, or that the defendant will himself pay it." If, then, the contract of plaintiff in error was absolute and unconditional, it would follow that the district court did not err in its rulings.

In the case of Powell v. Campbell, 20 Pac. Rep. 156, will be found an interesting discussion and review of the authorities by the Supreme Court of Nevada, on the question as to the power of the court in divorce proceedings, at the instance of the wife, to set apart a necessary portion of the husband's property for the support of herself and children. The case arose under the statute, substantially enacted in many of the States, making such provision by way of alimony, and the question is here as to the general construction and effect of that statute. The contention was that the "setting apart" of the husband's property did not mean to clothe the wife with the absolute title to it, giving her the fee-simple. After reviewing Maguire v. Maguire,

7 Dana, 187; Berthelsmy v. Johnson, 3 B. Mon. 90; Rogers v. Vines, 6 Ired. 293; Calame v. Calame, 25 N. J. Eq. 540; Broadwell v. Broadwell, 21 Ohio St. 657, the court concludes that if, in the proper accomplishment of the primary object of the statute—the support of the wife and children—it is reasonably necessary to invest the wife with the husband's title to property; if, in other words, without an investiture of the title, the object of the statute will be defeated—then the statute permits such investiture in the wife, as one of the means of securing her support. It was further declared that in an action for divorce, where the complaining wife alleges her necessities and the defendant's abilities and asks that certain particularly described real estate be set apart for her support, the rule of *lis pendens* can be invoked by her against one who purchases *pendente lite* with actual notice of the divorce suit.

THE question as to the right of a surviving partner to make a general assignment of the partnership property for the benefit of creditors, is discussed in the case of Shattuck v. Chandler, 20 Pac. Rep. 225, by the Supreme Court of Kansas. It is there held that, independent of statute, a surviving partner has such a right. Clogston, J., says:

In many of the States the doctrine is held that a surviving partner cannot make a general assignment, and in those States the theory upon which the decisions were rendered is that at the death of one partner the surviving partner becomes trustee of the partnership estate, and that he has no power to transfer the trust so created to another trustee. This seems to be the doctrine held in New York. See Nelson v. Sutherland, 36 Hun, 327; Loeschigk v. Hatfield, 51 N. Y. 660; Cushman v. Addison, 52 N. Y. 628; Tiemann v. Malliter, 71 Mo. 512; Vosper v. Kramer, 31 N. J. Eq. 420. On the other hand, it has been held by some of the States that the surviving partner may make a general assignment of a partnership; and to this effect are numerous decisions, among which is Emerson v. Senter, 118 U. S. 3, in which case the court held that the surviving partner could make a general assignment. This seems to be the settled doctrine of the Supreme Court of the United States, and should be followed, unless there is some statute making a different rule. This assignment was made under the laws of Illinois, and should be interpreted thereunder; but in this case no statute of Illinois was offered disclosing what provisions had been made in that State by statute for the winding up of partnership business, and, in the absence of any showing of this kind, we must presume that the statute of Illinois is like that of Kansas. This brings up the question, is there any statute in Kansas that conflicts with the rule laid down by the Supreme Court of the United States in the last case cited?

The court thereupon consider the scope of art. 2, ch. 37, Comp. Laws 1885, providing for the winding up of partnership estates, and conclude that the legislature by one of its provisions intend to provide a trustee to wind up the partnership upon the death of a member of the firm, and that the statute creates a trust in the surviving partner which he has no power to transfer to another. If the surviving partner under that statutes may transfer his trust to an assignee, then the assignee would close up the entire partnership business in the court having jurisdiction of the assignment and estate thereunder, and would be entirely free from the jurisdiction of the probate court, and the statute above cited would be without any force or effect. This means of winding up a partnership business has been prescribed by the legislature, and, in the absence of any proof of the statutes of Illinois to the contrary, we must presume that this is the manner of closing up partnership estates in that State.

IN Pond v. Metropolitan Elevated Ry. Co., 19 N. E. Rep. 487, the Court of Appeals of New York, reversing the supreme court of that State, lay down the rule of damages resulting from interruption of the easement of light. The question there was whether in a common land action brought by the owner of premises abutting on a street in the City of New York through which defendant's railway has been constructed to recover damages resulting therefrom through the interruption of light, the plaintiff can recover complete damages, once for all, as for a final and complete destruction *pro tanto* of the easement invaded by the act of defendant, or is confined to a recovery of such temporary damages as have accrued up to the commencement of the action, leaving him at liberty to bring a new action, in case the obstruction is not discontinued, for subsequent damages. The court adopted the latter rule, saying:

The argument that under the peculiar circumstances, and in view of the nature of the right invaded, as well as the probable permanent character and public purpose of the defendant's structure and franchise, the rule allowing permanent damages to be recovered, thereby giving finality to the controversy, has been pressed upon us with great force by the counsel for the respondent. But we think the question is not now open to controversy, and that the rule must now be regarded as settled by former decisions that an abutting owner, in a common law action of this character, can recover only such temporary damages as have been

sustained up to the time of its commencement, and that he is not entitled to damages measured by the permanent diminution in value of his property, upon the assumption that the wrong is permanent and irremediable. Reviewing Story Case, 90 N. Y. 122; Uline Case, 101 N. Y. 98; Lahr Case, 104 N. Y. 270; Bank v. Railway Co., 108 N. Y. 660. We think these cases have settled the rule that permanent depreciation cannot be recovered in an action like this. It is understood that this has been the interpretation of our decisions upon which the courts below have acted in cases. It might be productive of less inconvenience on the whole if an opposite rule could be adopted; but the rule established is consistent with legal principles. A recovery of judgment for damages for a trespass or the invasion of an easement does not operate to transfer the title of the property to the defendant, either before or after satisfaction, nor does it extinguish the easement. By the ordinary rule it is an indemnity for a past wrong, leaving unaffected the plaintiff's right to his property.

CONSTITUTIONALITY OF REGISTRY LAWS.

I. The Doctrine Stated.
II. Authority to Enact.
III. Enactments to be Reasonable.
IV. Uniformity of Registration.
V. Remedy to Compel Registration.

I. *The Doctrine Stated.*—It is established by an overwhelming weight of authority that, notwithstanding, the constitution may have prescribed conditions precedent to the exercise of the elective franchise, yet the legislative power may impose regulations that tend in a reasonable manner to insure a fair and honest ballot.

"The provision for a registry law deprives no one of his right, but is only a reasonable regulation under which the right may be exercised." [1]

The validity of such laws was first sustained and most satisfactorily upheld by Chief Justice Shaw, in an opinion so clear and exhaustive, and the conclusions of which have since become so well estabilised, that almost every court in the United States which has since had the question under consideration has followed and approved that decision. It was held in that case, that the acts of 1821–22 providing for a registration of voters in the city of Boston, and requiring that, previous to an election, the qualifications of voters should be proved, and their names be placed on an alphabetical list or register, was not to be regarded as prescribing a qualification in addition to those, which by the constitution entitled a citizen to vote, but only as a reasonable regulation of the mode of exercising the right of suffrage, which it was competent for the legislature to enact.[2]

II. *Authority to Enact.*—It might be inferred from some reported cases, that registry laws cannot be validly enacted, unless expressly authorized by the constitution. But whether the organic law provides for or is silent upon the subject of registration, is clearly not the test. The constitutions of many of the States are silent as to the time, place, and manner of conducting elections, and are absolutely devoid of any provisions to secure the purity of the ballot, but will it be contended from this that the legislative authority may not, in the absence of express authorization, regulate the time, place and manner, and provide reasonable regulations by registration or otherwise, to prevent frauds and insure an honest expression of the sovereign will, the final arbiter in a free republic?

"It is believed that no case goes so far as to deny the power of the legislature of a State to pass a registration act, when the constitution is silent upon the subject." [3]

Although the constitution confers the right of suffrage, it does not execute itself. The legislature under the authority of the constitution, either expressed or implied, prescribes such reasonable regulations, whether by registry or otherwise, as will attain purity in elections and secure the integrity of the ballot. In order that there may be a valid election it must be under statutory regulation, for there is no inherent right in the people to hold an election; and if the statute requires registration as a prerequisite to a valid election, an election in disregard of the registry law is invalid.[4]

[1] Cooley's Const. Lim. (5th ed.) 756.

[2] Capen v. Foster, 12 Pick. 485; s. c., 23 Am. Dec. 632; Brightly's Lead. Cases on Elections, 51. See also Hyde v. Brush, 34 Conn. 454; Edmonds v. Banbury, 28 Iowa, 267; s. c., 4 Am. Rep. 177; People v. Laine, 33 Cal. 55; Webster v. Byrnes, 34 Cal. 273; Davis v. School District, 44 N. H. 398; McMahon v. Mayor of Savannah, 66 Ga. 217; s. c., 42 Am. Rep. 65; Hawkins v. Carrol County, 50 Miss. 735; State v. Albin, 44 Mo. 346; Hardesty v. Taft, 23 Md 512; Anderson v. Baker, Ib. 531; Patterson v. Barlow, 60 Penn. St. 54, 78; State v. Butts, 31 Kan. 537; s. c., 2 Pac. Rep. 618; *In re* Polling Lists, 13 R. I., 729; Auld v. Walton, 12 La. Ann. 129.

[3] McCrary on Elections (3d ed.) 63; Ensworth v. Albin, 46 Mo. 453.

[4] People v. Kopplekom, 16 Mich. 342; See McDowel

In the Michigan case cited, the supreme court unanimously sustained the validity of a registry law which prohibited any voter from voting whose name was not registered. The circumstances of the case show that there having been no acting board of registration it was impossible for the electors to comply with the requirements of the law, and an election was held without such registration; but the court upheld the registry law, and declared such ballots illegal and void.

And in Iowa,[5] where an election was held without previous registry, although registration was required by law, it was held that the election was void. Many statutory regulations respecting registration are not simply directory; they are in their substance imperative and mandatory, and to allow discretion in the authorities charged with the execution of them would lead to public and private wrong, and often defeat the elector's right to vote.[6] Authority to require the registration of voters must be by statute, and a municipality, unless empowered to do so by its charter, has no authority to order such registration.[7] It is absolutely essential to the validity of an election that it be held under legislative regulation. This has been repeatedly affirmed in numerous cases.[8]

III. *Enactments to be Reasonable.*—The conclusion might be drawn from some reported decisions that, unless expressly authorized, registration laws are *per se* unconstitutional; but it will appear from an examination of the cases that it is because of the *unreasonableness* of their provisions, which impair the constitutional privileges of the elector, that such laws have been declared invalid. This unreasonableness may consist in abridging or otherwise impairing the constitutional guaranty; and a statute which does either of these things, although under color of regulation, manifestly subverts and injures the enjoyment of that right guaranteed by the constitution, and must therefore be invalid. Illustrations of this may be found in many adjudicated decisions.

It is a quite frequent provision of registry laws that the period of registration should cease or determine at a day certain before the general election, in order that the proper officers may revise, correct, and complete the list of registered names, and the question has arisen whether a person can be denied the right to vote who has not registered, either because of absence or physical disability.

In People v. Hoffman,[9] the Supreme Court of Illinois answer this question in the affirmative, sustaining the constitutionality of an act requiring registration to be complete by the "third Tuesday before the election." The court say: "If cases can be supposed where three weeks' requirement will deprive qualified electors of the privilege of depositing their votes, cases can also be supposed where one day's requirement will work the same result. * * * It would be a physical impossibility for the judges of election to receive the votes and make up the registry at the same time, and on the same day. * * If closing the registry three weeks before election may deprive a few persons becoming qualified during that period of the privilege of casting their ballots, keeping it open until a late date may admit to the polls hundreds of persons who should never have been allowed to vote."

Again, in Rhode Island, an act requiring the registry lists to be closed four days before the election has been sustained.[10] And in an able opinion pronounced by Judge Brewer of Kansas, it was held by the supreme court of that State, that a statute which directed registration to be complete ten days before election was valid.[11] Such limitation as to time is mandatory and must be observed, as where the statute of Florida directed the registration to be made between the first Monday of October, and ten days previous to any general election, the supreme court of that State held, in the case cited, that names added to the lists after the expiration of that time were not duly registered.

v. Rutherford Ry. Constr. Co., 96 N. C. 514; s. c., 2 S. E. Rep. 351.

[5] Nefzger v. D. & St. P. R. Co., 36 Iowa, 642.

[6] Smith v. Wilmington, 98 N. C. 343; s. c., 4 S. E. Rep. 492; Nefzger v. D. & St. P. R. Co., *supra*. But see People v. Wilson, 62 N. Y. 126.

[7] Smith v. Wilmington, *supra*.

[8] McCune v. Weller, 11 Cal. 49: People v. Martin, 12 Cal. 409; Sawyer v. Haydon, 1 Nev. 75; State v. Collins, 2 Nev. 351; State v. Robinson, 1 Kan. 17; State v. Jenkins, 43 Mo. 261.

[9] People v. Hoffman, 116 Ill., 587; s. c., 56 Am. Rep. 793; s. c., 5 N. E. Rep. 596.

[10] *In re* Polling Lists, 13 R. I., 729.

[11] State v. Butts, 31 Kan. 537; s. c., 2 Pac. Rep. 618. And see State v. Commissioners of Sumpter Co., 20 Fla., 859.

While such regulations are upheld by many well-considered authorities,[12] which may be accepted as the prevailing doctrine, yet there are cases holding the contrary opinion, namely, that such regulations are invalid.[13]

In Stearns v. Conner (Nebraska), just cited, the court held that a registration law which absolutely deprived an elector of the right to vote, unless registered on one of four days, the last day being ten days prior to the election, was unconstitutional and void.

The case of Daggett v. Hudson, *supra*, is also an extreme case illustrating the flagrant impairment of an elector's right to vote. From the statement it appears there were only seven days in the year when voters were allowed to register. The court unanimously declared such an act to be void. In the Oregon case cited, the chief justice held, in what is styled the opinion of the court, that "every law which requires previous registry as a prerequisite to the right to vote, is *ipso facto* void." But Mr. Justice Lord, who concurred in the result, based his concurrence upon certain objectionable features of the act, and in no way recognizes the reasoning of the chief justice, while Mr. Justice Thayer dissented *in toto*. The syllabus of the case is entirely unauthorized and misleading.

It should be observed that in the preceding cases no provision was made for registration after the closing of the registry. This injustice is obviated in many States by allowing an unregistered elector to make an affidavit before the board of registration, or the election or other proper officers, setting forth his qualifications and excuse for not registering, and produce such other proof as may establish his right to vote.[14]

In a recent case, in Massachusetts,[15] where the constitutional qualification was residence "within the commonwealth one year, and within the town or district * * * six calendar months preceding any election," it was held that an act of the legislature, providing that "no person hereafter naturalized in any court shall be entitled to be registered as a voter within thirty days of such naturalization," was unconstitutional and void as being an unreasonable requirement not contemplated by the constitution. This case is similar in principle to those cases in which registration laws have been declared invalid, because they extend the period of residence required by the constitution. As, in North Carolina, where the constitution required "thirty days' residence in a county," it was held that a registration law requiring "ninety days' residence" was void as not being warranted by the constitution.[16]

IV. *Uniformity of Registration.*—The constitutions of many States declare that "all elections shall be free and equal," [17] but it is settled that this does not necessarily mean that there must be a uniformity of regulations. "It was never heard of as a general principle of republican government, that the mode of conducting an election, and declaring its result, in one city, village or town of a State shall be exactly the same as the mode pursued for the same purpose in every other city, village or town in the State." [18] In the case cited, the court construe that clause in the bill of rights of Illinois in the following clear and satisfactory language: "Elections are *free* when the voters are subject to no intimidation or improper influence, and when every voter is allowed to cast his ballot as his own judgment and conscience dictate. Elections are *equal* when the vote of every elector is equal in its influence upon the result to the vote of every other elector; when such ballot is as effective as every other ballot." [19]

The question of uniformity in registration laws was elaborately considered in two Pennsylvania cases.[20] The constitution of that

[12] Capen v. Foster, *supra;* Cooley's Const. Lim. (5th ed.) 756; Weil v. Calhoun, 25 Fed. Rep. 865; Patterson v. Barlow, 60 Penn. St. 54.

[13] Stearns v. Conner, 22 Neb. 265; s. c. 34 N. W. Rep. 499; Daggett v. Hudson, 43 Ohio, St. 558; s. c., 54 Am. Rep. 832; s. c., 3 N. E. Rep. 558; State v. Baker, 38 Wis. 86; Dells v. Kennedy, 49 Wis. 555; s. c., 35 Am. Rep. 786; s. c., 6 N. W. Rep. 246; White v. Multnomah Co., 13 Oreg. 317; s. c., 10 Pac. Rep. 484.

[14] Farren v. Commrs. Buffalo Co., 37 N. W. Rep. (Dak.) 756; Edmonds v. Banbury, 28 Iowa, 267; s. c., 4 Am. Rep. 177; Hyde v. Brush, 34 Conn. 454; Byler v. Asher, 47 Ill. 101.

[15] Kinneen v. Wells, 144 Mass. 497; s. c., 59 Am. Rep. 105; s. c., 11 N. E. Rep. 916.

[16] People v. Canaday, 73 N. C. 198; s. c., 21 Am. Rep. 465; Page v. Allen, 58 Penn. St. 338; State v. Williams, 5 Wis. 308; Quinn v. State, 35 Ind. 485.

[17] Const. Ill. 1870, Bill of Rights, § 18; Poore's Charters and Constitutions, p. 472.

[18] People v. Hoffman, 116 Ill. 587; s. c., 56 Am. Rep. 793; s. c., 5 N. E. Rep. 596.

[19] People v. Hoffman, *supra.*

[20] Page v. Allen, 58 Penn. St. 351; Patterson v. Barlow, 60 Penn. St. 53.

State provided that "elections shall be free and equal." [21] The court in Page v. Allen, held that a registry law imposing certain duties upon the electors of Philadelphia, and not demanded of voters in other parts of the State, was unreasonable, vexatious and inconsistent with the clause mentioned in the bill of rights, declaring that "elections shall be free and equal." The decision in this case, however, was overruled in the later case of Patterson v. Barlow, which involved a construction of the same clause. It will be noticed that the dissenting judges in Page v. Allen, owing to a change in the bench, were in the majority in the subsequent case of Patterson v. Barlow, and they held that uniformity in conducting elections, and regulating registration was not guaranteed by the provision that "elections shall be free and equal," but that such a clause was a guaranty to the elector that he should be allowed to vote without intimidation or interruption, and that his ballot should be as effective as the ballot of any other voter. This conflict of judicial construction, however, led to such controversy that it was finally settled by inserting in the new constitution of 1873, the following amendment: "All laws * * * regulating the registration of electors, shall be uniform throughout the State." [22]

V. *Remedy to Compel Registration.* — It might be added that should a qualified elector be refused registration, the proper remedy would be *mandamus* of the registrar.[23]

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[21] Const. Penn. 1838, Bill of Rights, § 5; Poore' Charters and Constitutions, p. 1564.

[22] Const. Penn. 1873, art. VIII, § 7; Poore's Charters and Constitutions, p. 1583.

[23] Davis v. McKeeby, 5 Nev. 369; High on Extr. Legal Remedies § 66; State v. Huston, 4 S. L. Rep. 50, 52.

CONFLICT OF LAWS—GAMBLING CONTRACT—FUTURES—NEGOTIABLE INSTRUMENT.

SONDHEIM V. GILBERT.

Supreme Court of Indiana, November 27, 1888.

1. *Conflict of Laws—Contract.*—A contract valid where it is made and is to be performed is valid everywhere, unless it is contrary to good morals or to the positive law or policy of the State in which it is sought to be enforced.

2. *Gambling Contract — Futures—Negotiable Instrument — Innocent Holder.*—A note executed and payable in New York to the maker's own order, and indorsed and negotiated by him for the purpose of raising money to deal in options, is governed by the statute of New York rather than by that of Indiana, where it is sought to be enforced and is not void in the hands of a *bona fide* holder under the New York statute, which provides that all wagers, bets or stakes shall be unlawful; that all contracts for or on account of any money, property or thing in action so wagered shall be void, and that all securities, any part of the consideration of which is money won by playing at any game, or by betting on the hands of such as do play, or to repay any money knowingly lent at the time and place of such play to any person so playing, shall also be void.

MITCHELL, J., delivered the opinion of the court:

This was a suit by Samuel and Henry P. Sondheim, partners doing business under the firm name of Sondheim Bros., against John Gilbert, assignee of Miller Bros., insolvents, to establish a claim against the partnership estate of the latter, in the hands of the assignee. It is averred in the complaint that Conrad and Jacob Miller had theretofore been partners doing a general mercantile business in the city of Evansville, under the firm name of Miller Bros., and that on the 11th day of December, 1885, they executed their promissory note, payable to themselves in six months after date, in the city of New York, $7,264.11. It is averred that Miller Bros. afterwards negotiated the note by indorsement in blank, and that, after it passed through the hands of divers persons, the plaintiffs became the owners of the note, before its maturity, having paid therefor the full face value, without any notice whatever of the consideration for which it was given. The law of the State of New York, the note having been executed and made payable in that State, is set out in the complaint, and it appears therefrom that notes drawn in the form of that sued on are negotiable according to the custom and law of merchants. The case was disposed of in the court below by a ruling on a separate demurrer to certain answers, which set up, substantially, the following facts, viz.: That at the date of the execution of the note the Miller Bros. were engaged in the dry goods business in the city of Evansville, and that Conrad Miller, one of the members of the firm, made an agreement with Morris Ranger, without the knowledge or consent of Jacob Miller, the other member of the firm, that they (Ranger and Conrad Miller) should engage on joint account in speculating in cotton futures upon the New York

Cotton Exchange; that they agreed to buy, on joint account, 50,000 bales of cotton, to be nominally delivered during some months in the future; and that it was understood and agreed between them that no cotton was to be actually bought, sold, received, or delivered, but that after making pretended purchases, if the price shoud advance or decline on the New York Stock Exchange, there was to be a settlement of the differences accordingly, as the current price might be higher or lower than that nominally agreed upon at the time of the pretended purchase. It is averred that, in pursuance of the foregoing arrangement, Conrad Miller executed the note sued on, together with a large number of other notes, without the knowledge or consent of his partner, and that the notes so executed were indorsed in blank by Conrad Miller, in the name of Miller Bros., and placed in the hands of Ranger, to be used by him solely for the purpose of paying or securing losses or margins which were required to be put up in the contemplated transactions, which, it is alleged, were to be merely gambling or wagering speculations in cotton futures, and that the note sued on was made and indorsed for no other consideration whatever. In some of the paragraphs of answer, which set up substantially the foregoing facts, certain sections of a statute against gaming, and affecting certain contracts and securities, alleged to be in force in the State of New York, are set out. The court overruled the demurrer to the answers, and, the plaintiffs declining to reply, judgment was rendered disallowing the claim. The plaintiffs prosecute this appeal, and assign for error the ruling of the court in overruling the demurrer to the defendant's answers. Upon a determination of the propriety of this ruling, the judgment of the court below must be either affirmed or reversed.

Whether or not contracts, notes, bills, and other securities, growing out of transactions similar to those contemplated by Ranger and Miller, as disclosed by the facts admitted by the demurrer to the answers, are valid and collectible, has been the subject of much consideration in the courts. As related to legitimate commercial transactions, and the recognized methods of conducting the mercantile businesses of the day, the importance of the question cannot readily be overestimated. Formerly the rule was that articles which had no actual or potential existence at the time of the contract were not the subjects of sale; but this was found to be such an impediment to commerce that some relaxation in the rule was deemed necessary. It is now established upon indisputable authority that a contract for the sale and future delivery of a commodity of a designated kind or class, which the seller does not own, and which has at the time no actual existence, but which may be supplied by purchase in the market at the proper time, is a valid contract, provided it is the intention of the parties, or of one of them, at the time the contract is made, that the commodity shall actually be procured by the seller and supplied to the purchaser at or before the maturity of the agreement. Cobb v. Prell, 15 Fed. Rep. 774, 22 Am. Law Reg. 609, and note. Crawford v. Spencer, 92 Mo. 498, 4 S. W. Rep. 713, 1 Am. St. Rep. 745, and note. In such a case, it does not invalidate the transaction that the parties, or either of them, may have deposited money as a margin to secure the performance of the contract, or as indemnity against loss in case one or the other fails to consummate his agreement. As has been said, "present ownership is of less consequence than the intention of the contracting parties." Cockrell v. Thompson, 85 Mo. 510; Wall v. Schneider, 59 Wis. 352, 18 N. W. Rep. 443; Whitesides v. Hunt, 97 Ind. 191; Gregory v. Wendell, 39 Mich. 337, 33 Am. Rep. 390. While contracts for the sale of property to be delivered in the future are valid, where the parties, or either of them, actually contemplate a delivery of the subject-matter of the contract, yet if, under the guise of a contract which has the appearance of validity upon its face, the real intention is merely to speculate on the rise or fall of the market, without any purpose that any property shall be delivered or received, but with the understanding that at the appointed time the account is to be adjusted by paying or receiving the difference between the contract and the current price, then the whole transaction is illegal, as against public policy, and falls under the condemnation of the law. Whitesides v. Hunt, *supra*, and cases cited; Irwin v. Williar, 110 U. S. 499, 4 S. C. Rep. 160. The facts stated in the answer make it clear that the transactions contemplated by Morris Ranger and Conrad Miller were not the actual purchase and acceptance of cotton, but were speculative wagers upon the price of that commodity, from time to time, as it might be quoted on the New York Stock Exchange. This was an agreement to engage in mere wild speculation, in the nature of gambling or wagering upon the fluctuations in the price of cotton. Such transactions demoralize and embarrass legitimate trade, and are subversive of all correct business principles, destructive of commercial integrity and morality, and result, directly or indirectly, in most of the bankruptcies, defalcations, and forgeries which startle and distract business circles. Between the parties to such a transaction, and all others who participate in the specific illegal design, with the intention of aiding in its execution, so as to become principals or accessories thereto, any contract or other security resulting therefrom will be wholly invalid. But in the absence of of a statute in direct terms prohibiting transactions of the character of that in question, and declaring them unlawful, or expressly declaring promissory notes growing out of such a transaction invalid, while the courts will, on general common law principles, declare such notes invalid between the parties and those who were accessory to the illegal act, yet, in order to invalidate a note or other security in the hands of one who advanced money which the borrower intended to and did employ in carrying

on an illegal enterprise, it has been held that it was not enough to defeat a recovery that the lender knew the borrower's purpose. He must have been in some way implicated as a confederate in the specific illegal design under contemplation. It must have been a part of the contract, or there must have been in some way such a combination of intention between the lender and borrower that the money furnished should be used in aid of and to promote the unlawful enterprise that they became *particeps criminis*. Tyler v. Carlisle, 79 Me. 210, 9 Atl. Rep. 356; Waugh v. Beck, 114 Pa. St. 422, 6 Atl. Rep. 923; Tracy v. Talmage, 14 N. Y. 162; Arnot v. Coal Co., 68 N. Y. 558. Thus it was held in Bickel v. Sheets, 24 Ind. 1, that a contract for the sale of property which the purchaser intended to use for gaming purposes, in violation of a statute, was not void, although the seller was informed at the time of the sale of the purpose for which the property was to be applied. Cummings v. Henry, 10 Ind. 109; Feineman v. Sachs, 33 Kan. 621, 7 Pac. Rep. 222; Distilling Co. v. Nutt, 34 Kan. 724, 10 Pac. Rep. 163; Fisher v. Lord, 63 N. H. 514, 3 Atl. Rep. 927; Oil Co. v. Boyett, 44 Ark. 230. There must be knowledge of and participation in the illegal or immoral purpose.

It is not necessary, however, that we pursue this feature of the case further, and it is conceded upon the record that the note in suit came to the hands of the plaintiffs in the due course of trade, before maturity, for value, and without notice of the purpose for which it was executed or drawn. In order, therefore, to uphold a judgment which invalidates commercial paper in the hands of innocent holders, such as the plaintiffs are conceded to be, it is essential that a statute should be shown governing the case which in direct terms declares that transactions such as those here involved are unlawful, and that notes given under the circumstances exhibited by the facts in this case are absolutely void. The principle may be considered as well established that when a statute in express terms pronounces contracts, notes, bills, securities, and the like, resulting from or growing out of wagering or gambling transactions, which are prohibited by statute, absolutely void, no recovery can be had thereon; and the doctrine that transactions which a statute, in direct terms declares to be unlawful cannot acquire validity by the transfer of commercial paper based thereon, which is also under direct legislative denunciation, is fully supported by authority. New v. Walker, 108 Ind. 365, 9 N. E. Rep. 386; Thompson v. Bowie, 4 Wall. 463; Vallett v. Parker, 6 Wend. 615; 1 Daniel, Neg. Inst. §§ 197, 807. In such a case the note will be declared void in the hands of an innocent holder, in pursuance of the peremptory words of a statute which embraces in its terms the contract or obligation under consideration. Town of Eagle v. Kohn, 84 Ill. 292. The authorities justify the statement that a defendant may insist upon the illegality of the contract or consideration, notwithstanding the note is in the hands of an innocent holder for value, in all those cases in which he can point to an express declaration of the legislature that the illegality insisted upon shall make the security, whether contract, bill, or note, void; but unless the legislature has so declared, then, no matter how illegal or immoral the consideration may be, a commercial note, in the hands of an innocent holder for value, will be held valid and enforceable. Hatch v. Burroughs, 1 Woods, 439; Town of Eagle v. Kohn, *supra;* Bank v. Tinsley, 11 Mo. App. 498; Bank v. Harrison, 3 McCrary, 316, 10 Fed. Rep. 243; Edwards v. Dick, 4 Barn. & Ald. 212; Day v. Stuart, 6 Bing. 109; Chit. Bills, 492; 2 Rand. Com. paper, § 511.

It is argued, however, in support of the ruling below, that, because the note sued on was negotiated in consideration of money advanced with which to prosecute a wagering or gambling speculation, it is nevertheless void in the hands of an innocent holder, within the provisions of section 4950, Rev. Stat. Ind. 1881, which declares, in effect, that all notes, bills, etc., when the whole or any part of the consideration thereof shall be for money or other valuable thing won on the result of any wager, or for repaying money lent at the time of such wager, for the purpose of being wagered, shall be void. The note in suit having been executed and made payable in the State of New York, and it appearing that the alleged illegal transactions contemplated by the parties concerned in issuing and putting the note in circulation were to be engaged in and consummated in the State of New York, the law of that State must be looked to primarily in determining the validity of the contract, the rule in that respect being that a contract valid by the law of the State in which it is made and is to be performed is valid and enforceable everywhere, unless it is clearly contrary to good morals, or repugnant to the policy or positive statutes of the jurisdiction in which it is sought to be enforced. Tildon v. Blair, 21 Wall. 241; Bank v. Low, 81 N. Y. 566; Hawley v. Bibb, 69 Ala. 52; Stix v. Matthews, 75 Mo. 96; Swann v. Swann, 21 Fed. Rep. 299; Burns v. Railroad Co., 113 Ind. 169, 15 N. E. Rep. 230; Flagg v. Baldwin, 38 N. J. Eq. 219, 48 Am. Rep. 308; Hyatt v. Bank, 8 Bush, 193; Milliken v. Pratt, 125 Mass. 374. A contract, although valid where made, will not be enforced if, by the laws of the State whose jurisdiction is invoked, the contract which is sought to be enforced is stigmatized as unlawful, and so prohibited. Relying upon the invalidity of the note by force of the *lex loci contractus*, the appellee has, as we have seen, pleaded the statute of the State of New York relating to gaming contracts, in one of the paragraphs of his answer. In the other paragraph he relies upon the statute of our own State to invalidate the note. By section 8 of the New York statute (2 Rev. St. ch. 20, tit. 8, § 8), all wagers, bets, or stakes, made to depend upon any lot, chance, casualty, or unknown or contingent event, are declared to be unlawful, and all contracts for

or on account of any money, property, or thing in action so wagered, bet, or staked are declared void. The other section (2 Rev. St. ch. 20, tit. 8, § 16) declares, in effect, that all securities, any part of the consideration of which is money won by playing at any game, or by betting on the hands of such as do play at any game, or to repay any money knowingly lent, at the time and place of any such play, to any person so playing, shall be utterly void. This last section can have no possible application to a transaction such as that disclosed by the facts in the present case. It would be an unwarranted perversion of common and correct speech to hold that the consideration of a note which had been executed in order to obtain money with which to purchase options, or to put up as margins in cotton speculations, was money won by playing at a game, or by betting on the hands of others who do play, or to repay money lent at the time and place of such play. However much dealing in options may resemble gambling or betting, and demoralizing and pernicious as it may be, it cannot with any degree of propriety be said to be winning or losing money by playing at or betting upon any game within the meaning of the statute. Statutes involving penal consequence cannot be extended by construction so as to include acts not in terms forbidden, merely because of their resemblance to the acts prohibited, or because they may be equally demoralizing and injurious. Shaw v. Clark, 49 Mich. 384, 13 N. W. Rep. 786. The purpose of the legislation in enacting the statute was to avoid securities, any part of the consideration of which was money won by playing at any game, etc. The words of the statute are not to be enlarged by intendment, so as to extend beyond the mischief contemplated, where such a construction would be injurious to innocent third persons. A statute ought not to be enlarged, by mere construction, so as to to permit the very persons guilty of the offense prohibited to retain money obtained, contrary to the statute, from third persons guilty of no violation of law whatever. Edwards v. Dick, *supra*. The statutes against gaming, which render all wagers, bets, and stakes unlawful, and avoid all contracts for or on account of any money wagered or bet, or any notes or other securities, when the whole or any part of the consideration thereof shall be for money won or lost on any game or wager, and statutes which make it a criminal offense to bet upon any game, or the like, although not applicable in terms to the purchase of options, are sufficiently indicative of the policy of the law as respects mere wagering contracts, of whatever description or name, to require the court to pronounce all such contracts and securities invalid in the hands of those who were implicated in violating public policy by specifically aiding or directly participating in the furtherance of such transactions. They do not, however, go to the extent of destroying commercial securities in the hands of innocent holders for value, even though such securities may have had their inception in a transaction thus condemned. In respect to section 8, above referred to, it may be said the distinction between contracts for or on account of any money, etc., wagered, bet, or staked upon any game, and securities, bills, notes, etc., any part of the consideration of which shall be money won or lost by playing at any game, etc., is obvious. The contracts mentioned are the agreements of the parties, by which they undertake beforehand to bind themselves to pay or deliver to the winner the money, property, or thing wagered, bet, or staked on the game or contingent event. These are declared unlawful and void, and so they are, in whose ever hands they may be found. The things in action, notes, bills, securities, etc., referred to in the other section, are the evidences of indebtedness given for money won or lost by playing at any game, or by betting on the hands of those who play, after the event, or for money knowingly lent at the time and place of such play, to a person so playing; and these are declared to be utterly void, and so they are, without regard to their form or the fact that they may be in the hands of an innocent holder. City of Aurora v. West, 22 Ind. 88; 1 Daniel, Neg. Inst. § 807; Chit. Bills, 92; New v. Walker, *supra*; Greenland v. Dyer, 2 Man. & R. 422; 2 Rand. Com. Paper, § 511. The note sued on does not fall within the terms of either section of the New York statute. The paper was made by, and was payable to, Miller Bros. It was indorsed by them, or in their name, and delivered to Ranger, who advanced no consideration for it, but negotiated it to persons who took it for full value, in the regular course of business, without notice. Until the paper was negotiated for a consideration, it had no legal inception as a promissory note. In the hands of the parties to the illegal transaction contemplated, it was not a note given upon an illegal consideration, but it was a paper without any consideration, signed merely for purposes of accomodation. After it was negotiated, it became a promissory note, the consideration which was money advanced by persons who had no notice of the illegal purpose for which the parties contemplated using it, and who were in no way or sense parties implicated in the illegal confederacy. Having reached the conclusion that the statutes of the State of New York do not, in terms, render void mercantile notes executed in consideration of money, which the parties receiving the money intended to embark in gambling speculations on the stock market, it only remains that we say that the statutes of our own State already referred to indicate such a coincidence in the policy of both States as that the courts of this State will not hesitate to enforce the liability of a maker of a note such as that involved in the present case, in the hands of an innocent holder. It is not necessary that we should remark further upon the effect of the Indiana statute, as applied to notes growing out of transactions such as that under consideration, when such notes are executed and payable in this State. It is enough to say that we are no

disposed to indulge in a forced and strained construction of the language of our own statute, in order to reach the conclusion that, to enforce payment of a commercial note in the hands of an innocent holder, which is not within the inhibition of the statute of the State where the note was executed and made payable, would be either opposed to public morals, or violative of the policy or law of this State. These conclusions lead to a reversal of the judgment, The judgment is accordingly reversed, with costs.

NOTE.—*Conflict of Laws.*—The general rule is well settled that the validity of a contract is to be determined by the *lex loci contractus*,[1] unless it is to be performed in another State or country, and in that event it is generally governed by the law of the place of performance.[2] This rule has been applied in many cases to negotiable instruments.[3] Thus, the rights of the original parties to a bill or note are determined by the law of the place where it is made and payable,[4] but if payable in another State the law of the place of payment will govern.[5] Each indorsement is regarded as a new contract, and the rights and liabilities of the indorsers are determined by the law of the place where the indorsement is made and executed.[6] But these rules are subject to one well-defined exception. If the note or other contract is clearly contrary to good morals or repugnant to the policy or statutes of the State in which suit is brought, it will not be enforced in that State.[7] In Louisiana, however, it has been held that, while as a general rule the court "will not enforce the laws of another country to the injury of their own citizens, yet if a citizen goes abroad and makes a contract under the law of the place he must be bound thereby."[8]

"*Futures*" *and* "*Options.*"—A *bona fide* sale of personal property may be valid, notwithstanding the property is to be delivered in the future, and even though the seller has no other means of getting it than to go into the market and buy it.[9] "But if, under the guise of such a contract, valid on its face, the real purpose and intention of the parties is merely to speculate in the rise or fall of prices and the goods are not to be delivered, but the difference between the contract and market price only to be paid, then the transaction is a wager and the contract void."[10] "Margins" deposited in pursuance of such illegal transaction cannot be recovered, as it is the policy of the law to leave the guilty parties where it finds them.[11] The test of the validity of a contract for the sale of goods not to be delivered at the time is found in the intention of the parties when it was made.[12] To render the transaction invalid as to both parties both must have intended it as a risk upon prospective differences rather than as a *bona fide* sale in pursuance of which the property was to really be delivered.[13] And if the contract was entered into at the time of its execution in good faith and without any illegal intent, it is perfectly legitimate for the parties to afterwards agree upon a settlement by payment of differences instead of by actual delivery of the property.[14] So, a "margin" may be required to be deposited as security without rendering the contract illegal if it is otherwise valid.[15] And delivery may be made in warehouse receipts.[16] Nor is a contract for the sale of goods to be actually

[1] Satterthwaite v. Doughty, 59 Am. Dec. 554, and note; Webster v. Howe Machine Co., 8 Atl. Rep. 482; Gilman v. Stevens, 63 N. H. 342; Marvin Safe Co. v. Norton, 48 N. J. L. 415; S. C., 7 Atl. Rep. 418; Pritchard v. Norton, 106 U. S. 124; Laird v. Hodges, 26 Ark. 356; Well v. Golden, 141 Mass. 364.

[2] Fitch v. Remer, 8 Am. L. Reg. 634; Hyde v. Goodnow, 3 N. Y. 266; Lewis v. McCabe, 49 Conn. 141; Thurman v. Kyle, 71 Ga. 628; Pomeroy v. Ainsworth, 22 Barb. (N. Y.) 118; Andrews v. Pond, 3 Pet. 65; Bank v. Daniel, 12 Pet. 32. See also *In re* Peck, 27 Cent. L. J. 188, and note.

[3] See Story on Prom. Notes, 339; note to Ford v. Buckeye Ins. Co., 99 Am. Dec. 663, and authorities hereinafter cited.

[4] Mendenhall v. Gately, 18 Ind. 149; Emerson v. Partridge, 27 Vt. 8; Lawrence v. Bassett, 5 Allen (Mass.), 140; Commercial Bank v. Simpson, 90 N. C. 467.

[5] Murray v. Gibson, 2 La. Ann. 311; Coffman v. Bank, 41 Miss. 212; Faut v. Miller, 17 Grat. (Va.) 47; Peck v. Hibbard, 26 Vt. 698; Smith v. Mead, 3 Conn. 253; Hunt v. Standart, 15 Ind. 33.

[6] Dunnigan v. Stevens, 25 Cent. L. J. 542; Briggs v. Latham (Kan.), 24 Cent. L. J. 468, and note; Aymar v. Sheldon, 12 Wend. (N. Y.) 439; S. C., 27 Am. Dec. 137; Everett v. Vendres, 19 N. Y. 438; Hunt v. Standart, 15 Ind. 35; Scudder v. Union Nat. Bank, 91 U. S. 412. Compare Vanzant v. Arnold, 31 Ga. 210.

[7] Ivey v. Lalland, 42 Miss. 444; Warner v. Jaffray, 98 N. Y. 248; S. C., 48 Am. Rep. 616; Bryan v. Brisbui, 26 Mo. 423; Greenwood v. Curtis, 6 Mass. 378; Armstrong v. Toler, 11 Wheat. 258, 260; Thrasher v. Everhart, 3 Gill. & J (Md.) 234.

[8] Arayo v. Currell, 1 La. 528; S. C., 20 Am. Dec. 286. Compare Cambloso v. Maffett Wash C. C 98; Biggs v. Lawrence T. R. 454

[9] Hibblewhite v. McMorine, 5 Mees. & W. 462; Thacker v. Hardy, 18 Am. L. Reg. (N. S.) 258, and note; Melchert v. Am. Union Tel. Co., 3 McCrary, 521; Porter v. Viets, 11 Fed. Rep. 193, and note; Kirkpatrick v. Adams, 20 Fed. Rep. 287; Cobb v. Prell, 5 McCrary, 80; S. C., 22 Am. L. Reg. 609, and note; Hatch v. Douglass, 48 Conn. 116; S. C., 40 Am. Rep. 154; Conner v. Robertson, 37 La. Ann. 814; S. C. 55 Am. Rep. 521; Gregory v. Wendell, 39 Mich. 337; S. C., 33 Am. Rep. 390; Cockrell v. Thompson, 85 Mo. 510; Crawford v. Spencer, 92 Mo 498; S. C., 1 Am. St. Rep. 745, and note; Bigelow v. Benedict, 70 N. Y. 202; S. C., 26 Am. Rep. 573; Seeligson v. Lewis, 65 Tex. 215; S. C., 57 Am. Rep. 598; Whitesides v. Hunt, 97 Ind. 191; S. C., 49 Am. Rep. 441; Wall v. Schneider, 59 352; S. C., 48 Am. Rep. 520: Benj on Sales (4th ed.), § 542; 2 Addison Cont. *1137; Bishop Cont. § 534..

[10] Crawford v. Spencer, 92 Mo. 498; S. C., 1 Am. St. Rep. 745, 748, per Black, J.; Whitesides v. Hunt, 97 Ind. 191; S. C., 49 Am. Rep. 441; Dunn v. Bell (Tenn.) 4 S. W. Rep. 41; Waugh v. Beck, 114 Pa. St. 422; Rudolf v. Winters, 7 Neb. 125; Beadles v. McElrath (Ky.), 3 S. W. Rep. 152; Irwin v. Williar, 110 U. S. 499; Bangs v. Hornick, 30 Fed. Rep. 97; Lowe v. Young, 59 Iowa, 364; Kinnsey v. Berry, 65 Me. 570; Clay v. Allen, 63 Wis. 426; Waterman v. Buckland, 1 Mo. App. 45; "Gambling Contracts," 16 Cent. L. J. 235, and many of the authorities cited in note 9, *supra*.

[11] Gregory v. Wendell, 39 Mich. 337; S. C., 33 Am. Rep. 390; Thompson v. Cummings, 68 Ga. 124. Compare Norton v. Blaine, 29 Ohio St. 145.

[12] Cockrell v. Thompson, 85 Mo. 510; Hentz v. Jewell, 4 Woods, 636; S. C., 20 Fed. Rep. 592; Tomblin v. Callen, 69 Iowa, 229; "Gambling Contracts," 16 Cent. L. J. 225.

[13] Murry v. Ochiltree, 59 Iowa, 435; S. C., 15 Cent. L. J. 434; Conner v. Robertson, 37 La. Ann. 814; S. C., 55 Am. Rep. 521; Grizewood v. Bane, 11 C. B. 586; Pirley v. Boynton. 79 Ill. 351.

[14] Kent v. Miltenberger, 13 Mo. App. 503; S. C., 16 Cent. L. J. 433; Wall v. Schneider, 59 Wis. 352; S. C., 48 Am. Rep. 520; Clark v. Foss, 7 Biss. 540; Sawyer v. Taggart, 14 Bush. (Ky.) 729. Compare Everingham v. Meighan, 15 Cent. L. J. 332.

[15] Hatch v. Douglass, 48 Conn. 116; Wall v. Schneider, 59 Wis. 352; Whitesides v. Hunt, 97 Ind. 191.

[16] Gregory v. Wendell, 39 Mich. 337; S. C., 33 Am. Rep. 390, 393; Wall v. Schneider 59 Wis. 352; S. C. 48 Am. Rep 520

delivered rendered invalid by an option being given as to the time of delivery.[17]

A promissory note or other security given for a debt based either wholly or in part on an illegal transaction cannot be enforced as between the parties.[18] But, in the absence of a statute, a negotiable instrument incapable of enforcement as between the parties, because of such illegality, may, nevertheless, be good in the hands of a *bona fide* indorsee for value, without notice and before maturity.[19] In some of the States, however, there are statutes expressly avoiding negotiable instruments based on such illegal transactions.[20] And in nearly all of the States there are general statutes against gaming or wagering. Although these statutes are of the same general tenor and are not unlike in terms, yet there is much conflict in the authorities as to their effect, if any, on negotiable paper in the hands of a *bona fide* holder. In the recent case of Cunningham v. Nat. Bank, 17 Cent. L. J. 470; s. c., 71 Ga. 400, it was held that a promissory note given for losses in a speculation in cotton futures was void, under the Georgia statute, even in the hands of an innocent purchaser. That statute provides, however, that all evidences of debt "executed upon a gaming consideration are void in the hands of any person." Similar decisions have been rendered in Alabama and Wisconsin under the general "gaming statutes" of those States.[21] On the other hand, negotiable instruments growing out of similar transactions have been held valid in the hands of an innocent purchaser under statutes almost if not quite as comprehensive as those just referred to.[22] A further consideration of the general subject of contracts based upon acts prohibited by statute will be found in a leading article in 16 Cent. L. J. 302, entitled "Illegal Contracts." W. F. ELLIOTT.

[17] Gregory v. Wattowa, 58 Iowa, 711; Williams v. Tiedeman, 6 Mo. App. 269, 273; Kirkpatrick v. Bonsall, 72 Pa. St. 155; Union Nat. Bank v. Carr, 15 Fed. Rep. 438; Sawyer v. Taggart, 18 Am. L. Reg. (N. S.) 230, and note. See also Bigelow v. Benedict. 70 N. Y. 202; s. c., 26 Am. Rep. 573; Harris v. Turnbridge, 83 N. Y. 92; s. c., 38 Am. Rep. 398.

[18] Seeligson v. Lewis, 65 Tex. 215; s. c., 57 Am. Rep. 593; Barnard v. Backhaus, 52 Wis. 593. See also Steers v. Lashley, 6 Term Rep. 61; Griffiths v. Sears, 112 Pa. St. 523; Brown v. Turner, 7 Term Rep. 630.

[19] See authorities cited to this effect in principal opinion. Also Crawford v. Spencer, 92 Mo. 498; s. c., 1 Am. St. Rep. 745; Shaw v. Clark, 49 Mich. 384; s. c., 43 Am. Rep. 474; Greenland v. Dyer, 2 Man. & R. 422.

[20] Root v. Merriam, 27 Fed. Rep. 909; Tenney v. Foote, 4 Ill. App. 594; s. c., 95 Ill. 99; Statutes of South Carolina (1883), 306, § 5.

[21] Hawley v. Bibb, 69 Ala. 52; Barnard v. Backhaus, 52 Wis. 593.

[22] Crawford v. Spencer, 92 Mo. 498; s. c., 1 Am. St. Rep. 745; Third Nat. Bank v. Harrison, 10 Fed. Rep. 243. See also Lehman Bros. v. Strassburger, 3 Cent. L. J. 134, and authorities cited in note 19, *supra*.

RECENT PUBLICATIONS.

THE GREEN BAG, A Useless but Entertaining Magazine for Lawyers. Edited by Horace W. Fuller. Published Monthly. January, 1889. Charles C. Soule, Publisher. Boston, Mass.

We are frank to admit that the first glance at the title page of this new magazine for lawyers, destroyed in some measure, our preconceived and well-settled notion of Boston people, and particularly of Boston publishers. That many valueless articles have emanated from that city, we are not disposed to deny. But the inhabitant thereof who would not, blindly and aggressively, undertake to prove the negative of that proposition, it is safe to say, could have a permanent engagement in a dime museum, and this magazine, we believe, is the first instance on record where a Boston man has labelled his infant production "useless" and sent it out into the cold world, thus introduced. We are inclined to think that the publisher either knew the stigma was false, or with reasonable diligence could have found it to be so, and that, in thus branding his offspring, he at the same time expected to get credit for an unusual display of modesty on the part of a Boston publisher, and also to make strong his infant in the sympathy at least of the profession. In other words, we are forced to conclude that a Boston publisher is modest "for revenue only." But, independent of its introduction, we take pleasure in saying, after a careful examination of the January number of "The Green Bag," that it is "entertaining," and therefore, useful. We believe that the educated lawyer of to-day wants something in addition to dry reports of cases, and that a magazine which excludes them and, instead, seeks to amuse, entertain and instruct in a literary way, will find many supporters. In this number will be found an article on Chief Justice Fuller with accompaning cut. A very interesting paper on the Harvard Law School, with many illustrations, both of places and prominent professors thereof, will be eagerly read by the many graduates of that historic institution, as well as by others who desire to know something of it. We are informed that each monthly number of this magazine will contain a full page portrait of some eminent judge or lawyer, and during the year a series of articles will be given on the leading law schools of America.

The magazine is prepared in a most attractive way, and contains editorial notices, etc., of current interest.

THE AMERICAN AND ENGLISH RAILROAD CASES. A Collection of all the Railroad Cases in the Courts of Last Resort in America and England. Jas. M. Kerr, Editor, Wm. M. McKinney, Associate Editor, Vol. XXXIV. Northport, Long Island, N. Y.: Edward Thompson Co., Publishers.

This last volume of the railroad cases is fully up to the standard of its predecessors, and that, as a matter of fact, is all that need be said in its favor. For, this series justly stands high in the estimation of the profession, a fact which is partly due to the practical questions involved in the cases reported, but largely to the eminent qualifications of the editor, Mr. James M. Kerr, for the work of arranging and annotating, all of which has been done in the most admirable manner. The work is certainly invaluable to the railroad lawyer and also to that large portion of the legal fraternity who are eager to have it known that they are "agin railroads," for herein may be found railroad law on almost every conceivable subject, from negligence to the establishment of freight rates by the Interstate Commerce Commission. On the subject of negligence there are many interesting cases involving questions of injury to trespassers and licensees and in the crossing of railroad track, and by defective bridges. An important case, very extensively annotated, involving question of liability for passenger's baggage is Great Western R. Co. v. Bunch. There are cases on the question of limited ticket, free passes, injuries on Sunday, etc. Some interesting decisions by the Interstate Commerce Commission are to be found here, notably that in reference to the Kentucky & Indiana Bridge Co., in which it is held that the bridge company controlling

the bridge across the Ohio river at Louisville is a common carrier, and, therefore, bound to accept traffic from a railroad company connecting with it. This ruling of the commission has, however, since been overruled on appeal to the United States Circuit Court of Kentucky.

BOOKS RECEIVED.

BLICKENSDERFER'S BLACKSTONE'S ELEMENTS OF LAW, ETC., with Analytical Charts, Tables and Legal Definitions, Arranged and Displayed by a Systematic and Attractive Method. By U. Blickensderfer, Attorney at Law, Author of "Abridgment of Elementary Law," "Law Student's Review," "Descent of the Crown of England," etc. Chicago, Ill.: Ulric Blickensderfer, Publisher. 1889.

AMERICAN CONSTITUTIONAL LAW, by J. I. Clark Hare, LL.D. In Two Volumes. Boston: Little, Brown & Company. 1889.

QUERIES AND ANSWERS.

[*Subscribers are invited to send short answers to the following.*]

QUERY NO. 11.

A dies leaving a will in which she bequeaths certain personal property to her children, and in the bequest to each makes him a devise in the following words: "And his share of the farm." The testator owned a farm of 160 acres. One of her children had died several years previous, who had for a consideration quitclaimed to his brother his interest in said 160 acres of land. Can the heirs of the deceased son maintain a partition suit, or have they any interest in the land? The deceased son is not mentioned in the will, but bequests are made to some of his heirs, but no mention is made of any devise to them. W.

QUERY NO. 12.

A dies leaving a will by which he gives his real and personal estate to his wife B, for and during her natural life. On and after the death of B he gives to his two daughters C and D the sum of $2,000 each, payable one-half thereof 1 year after the decease of B and the other half 2 years after such death, and declares said legacies to be a charge upon his real and personal estate. His daughter C died before the testator, leaving two children, E and F, who survived the testator. F died intestate and unmarried, leaving a father G and a sister, said E, surviving, and who also survived the life-tenant B, who died after F. Who is entitled to the $2,000 devised to C? G claims half of it and E thinks she is entitled to the whole. Which is right? R. S. L.

QUERY NO. 13.

A gives a deed of trust to B, a married woman. Upon paying same off A gives a quitclaim deed without her knowledge and joining in same to B. Is it good or should husband join with A. Please cite authorities. The transaction under Missouri law. B. H. B.

QUERIES ANSWERED.

QUERY NO. 8.

[*To be found in Vol. 28, Cent. L. J., p. 142.*]

Whether the title is now in B or in B's wife is a question which various courts decide differently. Devlin on Deeds, §§ 300, 302. In order that A may claim anything from B for use of the land during the time mentioned, admitting the title to have been in A till the second deed was executed, the relation of landlord and tenant must have existed between A and B by contract, express or implied. The facts prevent any such assumption, and A has no claim against B therefor. Taylor's Land. & Ten. (8th ed.), §§ 25 and note, 636. R. H.

Another answer.—The query shows plainly that possession was taken under contract of purchase, and that the relation of landlord and tenant never existed. For such reasons rent cannot be collected. 98 Ind. 201; 45 Ind. 576. W. H. B.

QUERY NO. 9.

[*To be found in Vol. 28, Cent. L. J. p. 167.*]

When the magistrate has jurisdiction, and his proceedings are irregular or erroneous, the judgment is voidable only, but not void. Church on *Habeas Corpus*, § 370. When the judgment is erroneous but not void, it can only be attacked by direct proceedings, and *habeas corpus* will not lie. *Idem.*, §§ 240, 1410. Such seems to be the general rule. W. T.

QUERY NO. 10.

[*To be found in Vol. 28, Cent. L. J. p. 168.*]

The only reason why A cannot sue in *assumpsit* is, that the matter is *res adjudicata*. The rule is, that he cannot contradict the decision, but in this case he would not contradict the decision, but affirm it. A judgment is an estoppel, when the evidence necessary to sustain a judgment for plaintiff in the present action would have authorized a judgment for him in the former action; otherwise not. Freeman on Judg. § 259. The former judgment is conclusive on the parties as to the matter directly decided. *Idem.* § 249. If the plaintiff, by mistake, brings the wrong action, he may bring a new action, though judgment went against him. Livermore v. Hershell, 3 Pick. 33. An action for the recovery of a specific $9,000, alleged to be detained from him, is no bar to an action for $9,000 of debt generally due him from defendant. Lager v. Blain, 44 N. Y. 445. A can sue in *assumpsit*. A. J. M.

Another answer.—A's action was to recover possession of his property on account of B's fraud, and A's right to recover value of the goods as upon a sale, could not have been adjudicated under such a complaint. It is only when the same question has been determined, or might have been, under the pleadings, that a former judgment is a bar. 2 Ind. 269; 21 Ind. 150.; 12 Ind. 629, and all authorities upon former adjudication. W. H. B.

JETSAM AND FLOTSAM.

"GENTLEMEN of the jury," said counsel in an agricultural case, "there were thirty-six hogs in that lot—thirty-six. I want you to remember that number—thirty-six hogs—just three times the number that there are in the jury box."

THEY have a good one just at present on a well-known Kansas City lawyer, who is noted for his absent-mindedness. He went up his own stairs the other day, and seeing a notice on his door, "Back at two o'clock," sat down to wait for himself.

JUDGE (to jury)—"Have you agreed upon a verdict? Is the prisoner guilty or not guilty of theft, as charged in the indictment?" Foreman—"We have not yet reached a verdict, your honor. I missed my pocket-book in the night, and I would respectfully ask that each juror be searched."

WEEKLY DIGEST

Of all the Current Opinions of all the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ACCOUNTING—Pleading—Partnership.——A petition, in an action upon a contract by which the plaintiff is to receive fixed monthly wages, and the profits of the business are to be divided between the parties, alleging that a special sum is due plaintiff on account of his wages, but not showing that any partnership business was done, or that any partnership account exist, does not state a case for equitable accounting. — *Galliers v. Peppers*, S. C. Iowa, Jan. 18, 1889; 41 N. W. Rep. 205.

2. APPEAL BONDS. —— Under Code Md. 1888, art. 5, § 5, providing that appeal bonds shall be executed "with sufficient securities," an appeal bond with only one surety is invalid as a statutory bond.—*Harris v. Regester*, Md. Ct. App., Jan. 10, 1889; 16 Atl. Rep. 386.

3. APPEAL — Constitutional Law. —— Under Const. Ark. art. 7, § 33, and Dig. Ark. § 1436, the petitioners for an order for the prohibition of the sale of liquor under the "three-mile law," may appeal from an order of the county court denying their petition, though the latter statute makes no provision for an appeal.— *McCullough v. Blackwell*, S. C. Ark., Jan. 12, 1889; 10 S. W. Rep. 259.

4. APPEAL—Pleading.——In an action by an attorney for professional services, an objection that the complaint does not state facts sufficient to constitute a cause of action will not be sustained, where there was no demurrer and no plea of statute of limitations.—*Allen v. Haley*, S. C. Cal., Dec. 26, 1888; 20 Pac. Rep. 90.

5. APPEAL—Review — Bill of Exceptions. —— Before the court can consider questions as to the admissibility of evidence, or as to the correctness of instructions, the bill of exceptions or the transcript must contain all the evidence.— *Territory v. Clanton*, S. C. Ara., Jan. 1889; 20 Pac. Rep. 94.

6. APPEAL — From Interlocutory Decree. —— In an action to obtain a decree declaring plaintiff to be the equitable owner of an undivided interest in real property, and for a partition, an interlocutory decree was entered. An appeal was taken from the statutory time: *Held*, that if the decree adjudging the equitable interest of the plaintiff was not to be regarded as a part of the partition suit, it was not appealable at all. — *Watson v. Sutro*, S. C. Cal., Dec. 27, 1888; 20 Pac. Rep. 88.

7. ARBITRATION AND AWARD—Assumpsit—Boundaries. —— Entering on the disputed land and erecting thereon a fence several rods from the line between the parties' adjoining lands, designated by arbitrators, to whom the finding and fixing the true line was submitted, do not constitute a breach of the agreement "to abide by and perform the award," for which *assumpsit* will lie. — *Weeks v. Trask*, S. J. C. Me., Dec. 27, 1888; 16 Atl. Rep. 413.

8. ARBITRATION AND AWARD—Notice. —— Where one of three arbitrators, who is absent from his home, receives no notice of, and is not present at, any meeting, an award by the remaining two is void. — *Doherty v. Doherty*, S. J. C. Mass., Jan. 4, 1889; 19 N. E. Rep. 352.

9. ASSIGNMENT FOR BENEFIT OF CREDITORS— Voidable —Assignees. —— Where a debtor assigns all his property for the benefit of his creditors by an assignment which is voidable by them, and afterwards is declared insolvent, the assignee in insolvency can recover of the trustee the property assigned, and the proceeds thereof.—*White v. Hill*, S. J. C. Mass., Jan. 5, 1889; 19 N. E. Rep. 407.

10. ASSIGNMENT FOR BENEFIT OF CREDITORS — Assignee. —— Under Rev. St. Ind. 1881, § 2674, where an assignee paid out of the trust funds a portion of a mortgage debt before foreclosure proceedings, under an agreement with the mortgagee that if the general creditors should become dissatisfied the money would be repaid: *Held*, that the assignee could recover back the money so paid. — *Wheeler v. Hawkins*, S. C. Ind., Jan. 12, 1889; 19 N. E. Rep. 470.

11. ASSUMPSIT—Demand. —— Where one wrongfully receives the money of another, a cause of action to recover it accrues to the latter without any demand. — *Village of Glencoe v. County Commissioners*, S. C. Minn., Jan. 14, 1889; 41 N. W. Rep. 239.

12. ATTACHMENT—Bills of Exceptions. —— Affidavits used at the hearing of a motion to dissolve an attachment will not be considered in this court on error, unless preserved by a bill of exceptions. — *Olds Wagon Co. v. Benedict*, S. C. Neb., Jan. 4, 1889; 41 N. W. Rep. 254.

13. ATTACHMENT—Sales— Recording. —— Under Rev. St. Me. ch. 76, § 36, a second attaching creditor, purchasing the land at a sale under his attachment, takes his title as against the first attaching creditor, who afterwards purchased at a sale under his attachment, but who fails to record his deed within three months.— *Hayford v. Rust*, S. J. C. Me., Dec. 17, 1888; 16 Atl. Rep. 370.

14 BANKS AND BANKING—Savings Bank.——Where a savings bank is incorporated, for the purpose of receiving deposits to be used to the best advantage, the income to be divided among the depositors, and the officers to receive no compensation, there is no absolute promise to repay to any depositor the full amount of his deposit, and, in case of loss from an investment carefully and lawfully made, it must be borne *pro rata* by the depositors. — *Lewis v. Lynn Inst.*, S. J. C. Mass., Jan. 3, 1889; 19 N. E. Rep. 365.

15. BANKRUPTCY—Discharge — Fraud. —— The fraud which, under Rev. St. U. S. § 5117, will prevent a debt from being affected by a discharge in bankruptcy, means actual positive fraud.—*Noble v. Hammond*, U. S. S. C., Jan. 14, 1889; 9 S. C. Rep. 235.

16. BILL OF EXCEPTIONS.——Under Code Iowa, § 2831, the bill of exceptions must be filed during the term unless time is extended by order of court. — *Deering v. Irving*, S. C. Iowa, Jan. 18, 1889; 41 N. W. Rep. 204.

17. BILL OF SALE—Construction. —— A bill of sale of "all my stock of goods," and all other personal property, contained in a certain building, or on the lot on which said building is located, is sufficient to carry title to a portion of the stock which had been withdrawn temporarily from the building. — *Towsley v. Russell*, S. C Iowa, Jan. 18, 1889; 41 N. W. Rep. 208.

18. BOND—Supersedeas. —— Bond being forfeited by writ of error being dismissed, the obligors in it were responsible not only for all damages and costs and fees which had been awarded, when said writ of error was dismissed, but also for the amount of the judgment which had been superseded by an order of the supreme court of appeals, which was afterwards dismissed. — *State v. Dotts*, S. C. W. Va., Dec. 1, 1888; 8 S. E. Rep. 391.

19. CANCELLATION OF INSTRUMENTS — Judgment.—— Where, after a trial before a justice, and a verdict against one defendant, the justice enters judgment against both defendants, and execution issued thereon, equity will set aside such judgment as fraudulently entered against second defendant. — *Dady v. Brown*, S. C. Iowa, Jan. 18, 1889; 41 N. W. Rep. 209.

20. CARRIERS—Discrimination.——Rev. St. Me. ch. 51, § 134, requiring railroads to extend equal facilities and accommodations to all express companies engaged in business within the State, protects foreign express as well as domestic. — *International Express Co. v. Grand Trunk Railway*, S. J. C. Me., Dec. 10, 1888; 16 Atl. Rep. 370.

21. CHATTEL MORTGAGE—Pledge — Assignment. —— *Held*, under the recitals therein the mortgage should be construed as a pledge and not an assignment. — *Sperry v. Clark*, S. C. Iowa, Jan. 17, 1889; 41 N. W. Rep. 208.

22. CHATTEL MORTGAGES—Lien— Priorities. —— The lien of a chattel mortgage is not affected by a prior parol agreement between the mortgagors and third persons, the mortgages to be executed by the mortgagors shall have priority over it, when it is actually executed and delivered in violation of such agreement. —*Lazarus v. Henrietta Nat. Bank*, S. C. Tex., Dec. 21, 1888; 10 S. W. Rep. 252.

23. CHATTEL MORTGAGES — Foreclosure — Presumptions.——In an action to foreclose a chattel mortgage against the mortgagor, and one in whose possession the mortgaged goods are, declarations of the mortgagor that he had sold to his co defendant are admitted without objection, evidence sufficient to warrant presumption that the sale to the co-defendant was after the mortgage was executed.—*Chaytor v. Brunswick-Blake-Collender Co.*, S. C. Tex., Oct. 26, 1888; 10 S. W. Rep. 250.

24. CONSTITUTIONAL LAW—Taxation.——Rev. St. Ind. 1881, § 6339, does not violate the provision of the bill of rights that a person shall not be twice punished for same offense.—*Durham v. State*, S. C. Ind., Jan. 5, 1889; 19 N. E. Rep. 327.

25. CONSTITUTIONAL LAW — Corporation as Guardian. —— The provisions of Gen. Laws 1883, ch. 107, safe-deposit, and trust companies, granting to such corporations power to act as guardians of the estates of insane persons: *Held*, valid. — *Minnesota Loan & Trust Co. v. Beebe*, S. C. Minn., Jan. 11, 1889; 41 N. W. Rep. 232.

26. CONSTITUTIONAL LAW— Police Power — Nuisances. —— St. Mass. 1887, ch. 348, declaring that any fence unnecessarily exceeding six feet in height, maliciously erected for the purpose of annoying adjoining owners or occupants, is a private nuisance, and that an injured adjoining owner or occupant may have an action, is constitutional. — *Rideout v. Knox*, S. J. C. Mass., Jan. 4, 1889; 19 N. E. Rep. 390.

27. CONTINUANCE—Absent Witness — Deposition.—— An application for a second continuance on the ground of an absent witness will not be granted, where it appears that the deposition of the witness had been taken, and his presence was desired to explain some portions of it. — *East Line, etc. Co. v. Scott*, S. C. Tex., Nov. 9, 1888; 10 S. W. Rep. 298.

28. CONTRACT—Attorney's Fee—Contingency.——Defendant, an attorney, who was to receive as a fee one-sixth of the amount recovered, employed plaintiffs to assist him, agreeing to pay them one-half his fee. On settlement plaintiffs expressed dissatisfaction with the amount, but gave a receipt in full, refusing to wait until defendant could write to his clients to ascertain if they would allow an additional amount: *Held*, that plaintiffs could not recover one-half of an additional sum afterwards allowed defendant by his client. — *Conyers v. Graham*, S. C. Ga., Dec. 10, 1888; 8 S. E. Rep. 521.

29. CONTRACTS—Officers—Taxation.—— Where taxes are due on personal property, and the county treasurer is about to enforce the collection by distress and sale of the property, the treasurer cannot accept the promise of one negotiating for a purchase of the property to pay said taxes, and suffer the property to go without distress and sale, and such agreement is not binding on the promisor. — *Cass County v. Beck*, S. C. Iowa, Jan. 17, 1889; 41 N. W. W. Rep. 200.

30. CONTRACT—Acceptance. —— Questions under the evidence as to agreement and acceptance of sale of land by mail and telegram.—*Robinson v. Weller*, S. C. Ga., Dec. 19, 1888; 8 S. E. Rep. 447.

31. CONTRACT—Condition—Parol Evidence. —— Where a written agreement was signed and placed in the possession of a custodian, to be held until certain conditions were complied with, the failure of the conditions can be proved by parol testimony. — *Gregory v. Little John*, S. C. Neb., Jan. 3, 1889; 41 N. W. Rep 253.

32. CONVERSION—Equity—Devise.—— A devise of land, to be sold by the executors at such time and in such manner as they may deem best, the proceeds to be paid to a trustee for the benefit of certain persons named, constitutes an equitable conversion of the realty into personalty. — *Carr v. Branch*, Va. Ct. App., Jan. 10, 1889; 8 S. E. Rep. 476.

33. COPYRIGHT—Blank Legal Forms.——A blank form of application for a license to sell liquor at retail, composed of three blanks,— a "petition," a "bond and warrant," and a "justification,"— all intended to be filled up and filed by the applicant, is included in the term "book," and is the subject of a valid copyright.—*Brightly v. Littleton*, U. S. C. C. (Penn.), Nov. 24, 1888; 37 Fed. Rep. 103.

34. CORPORATIONS—Purchase of Corporate Debts.—— After an assignment by a corporation for the benefit of its creditors, and the sale of its entire assets, one who was its treasurer and a director may purchase debts owing by the corporation, and, having done so, is entitled to participate in the distribution of the fund. — *Appeal of Hammond*, S. C. Penn., Jan. 7, 1889; 16 Atl. Rep. 419.

35. CORPORATIONS — Directors. —— Directors of corporations not liable for mismanagement to creditors of the corporations unless made so by some provision of statute. — *Frost Manuf. Co. v. Foster*, S. C. Iowa, Jan. 18, 1889; 41 N. W. Rep. 212.

36. COUNTIES—Costs—Criminal Law.—— Under Code Iowa, § 4233, until arrest of the defendant the magistrate has no jurisdiction over him, and cannot bind the county for the mileage and attendance fees of witnesses subpœnaed before such arrest. — *Warnstaf v. Louisa County*, S. C. Iowa, Jan. 22, 1889 41 N. W. Rep. 195.

37. COURTS — Jurisdiction — Enjoining Judgment of State. —— Under Code Va. 1873, ch. 165, § 1, the circuit court of the city of Richmond alone has jurisdiction of any suit to enjoin or affect any judgment or decree in behalf of the commonwealth.— *Commonwealth v. Latham*, Va. Ct. App., Jan. 10, 1889; 8 S. E. Rep. 488.

38. CRIMINAL LAW—Indecent—Assault—Evidence.—— In an action for damages for an indecent assault, a verdict may be rendered on the uncorroborated testimony of plaintiff, though a conviction could not be had thereon in a criminal prosecution for rape. — *Rogers v. Winch*, S. C. Iowa, Jan. 19, 1889; 41 N. W. Rep. 214.

39. CRIMINAL LAW—Homicide — Intent. —— Instructions that defendant is guilty of murder if he inflicted the wounds charged "with the intent formed in the mind at the time of the injuries to take deceased life," and that "an unlawful act coupled with malice, and resulting in death, will not of itself constitute murder in the first degree," but "the killing must have been intentional, after deliberation and premeditation," are correct as to the intent. — *Green v. State*, S. C. Ark., Jan. 19 1889; 10 S. W. Rep. 226.

40. CRIMINAL LAW—Offenses Against Postal Laws.——

An indictment under Rev. St. U. S. § 3893, charging that defendant did knowingly deposit for mailing and delivery certain obscene pictures, etc., is not open to the objection that it is not alleged that the defendant knew the character of that which he deposited.—*United States v. Clark*, U. S. C. C. (Minn.), Dec. 14, 1888; 37 Fed. Rep. 105.

41. CRIMINAL LAW — New Trial — Supreme Court.—— The supreme court has no jurisdiction, as a court of equity, in an action instituted originally before it, to vacate a judgment and grant a new trial in a criminal prosecution. — *Paulson v. State*, S. C. Neb., Jan. 3, 1889; 41 N. W. Rep. 249.

42. CRIMINAL LAW—Forgery—Indictment — Allegation of Intent. —— If the indictment be for falsely making and forging an obligation of the Unted States, it is sufficient to aver in the general language of the statute an intent to defraud, and the name of any person sought to be defrauded need not be mentioned, nor is any more specific averment necessary, such as might be required if the offense charged were that of passing or attempting to pass, uttering or publishing the forged security.—*United States v. Jolly*, U. S. D. C. (Tenn.), Nov. 15, 1888; 37 Fed. Rep. 108.

43. CRIMINAL LAW—Counterfeiting — Indictment.—— It is not essential, in an indictment for counterfeiting United States compound-interest treasury notes, to aver that the alleged counterfeits are in the likeness and similitude of genuine notes authorized by the act of congress under which they purport to have been issued.— *United States v. Owens*, U. S. C. C. (Tenn.), Dec. 12, 1888; 37 Fed. Rep. 112.

44. CRIMINAL LAW—Homicide—Manslaughter. —— Under the facts held that the homicide was not reduced to manslaughter on account of sudden passion under Pen. Code Texas arts. 593, 596. — *Clare v. State*, Tex. Ct. App., Dec. 19, 1888; 10 S. W. Rep. 242.

45. CRIMINAL LAW — Fornication — Evidence. —— A conviction for fornication will not be disturbed, where the female swore positively to the offense, and the defendant did not deny her testimony under oath, but attempted to show an *alibi*, in which he failed.—*Mitchell v. State*, S. C. Ga., Dec. 22, 1888; 8 S. E. Rep. 444.

46. CRIMINAL LAW — Character of Accused. —— It is error to instruct the jury that they may consider the character of the accused only in case they are doubtful from the other evidence as to his guilt. — *Shropshire v. State*, S. C. Ga., Dec. 19, 1888; 8 S. E. Rep. 450.

47. CRIMINAL LAW— Instructions. —— Where a criminal case is submitted to the jury without any instructions asked, and the jury, after being out four hours, ask for instructions on the question of reasonable doubt, and the court fully and correctly instructs the jury on that point, it is not error to exclude other instructions then offered by defendant, as coming too late. — *Williams v. Commonwealth*, Va. Ct. App., Jan. 10, 1889; 8 S. E. Rep. 470.

48. CRIMINAL LAW — Rape —Resistance. —— To a requested instruction that, to constitute rape, force must be used such as may reasonably be supposed adequate to overcome the physical resistance of the woman, it is proper to add that the jury may take into consideration the making of outcries and giving alarm. — *Mingo v. Commonwealth*, S. C. Va., Jan. 17, 1889; 8 S. E. Rep. 474.

49. CRIMINAL LAW—Embezzlement — Evidence. —— Where in a trial for embezzlement the defense is properly submitted by the court to the jury, their verdict will not be set aside on appeal, though the proof of defendant's guilt is weak.— *People v. Doane*, S. C. Cal., Dec. 24, 1888; 20 Pac. Rep. 85.

50. CRIMINAL LAW—Arraignment—Petty Larceny.—— Defendant indicted for larceny in stealing a cow, of the value of $15 may be tried without being arraigned. —*State v. Moore*, S. C. S. Car., Jan. 3, 1889; 8 S. E. Rep. 437.

51. CRIMINAL LAW—Murder—Evidence. —— Evidence sufficient to show that dead newly born child was defendant's and to sustain conviction for its murder. — *Echols v. State*, S. C. Ga., Dec. 22, 8 S. E. Rep. 443.

52. CRIMINAL LAW—Homicide — Intent. —— A charge that it constitutes murder if the accused conceived a design to assault deceased, and in consequence of such assault he died, whether deceased intended to kill him or not, is proper.—*State v. Alexander*, S. C. S. Car., Jan. 3, 1889; 8 S. E. Rep. 440.

53. CRIMINAL LAW — Homicide — Self-defense. —— If derendant has received serious bodily injury, and believing that the danger of receiving additional bodily injury is threatening, shoots, the killing would be justifiable, in self-defense, under Pen. Code Tex. art. 570. — *High v. State*, Tex. Ct. App., Dec. 8, 1888; 10 S. W. Rep. 238.

54. CRIMINAL LAW—Appeal— Record. —— Where the record on appeal does not show any action taken on a demurrer to defendant's plea of former jeopardy, defendant will be held to have waived the plea. — *Johnson v. State*, Tex. Ct. App., Dec. 19, 1888; 10 S. W. Rep. 235.

55. CRIMINAL LAW — Arguments of Counsel. —— In a prosecution for illicit cohabitation, statements by the prosecuting attorney, on the argument, that defendant's wife is heart-broken over his conduct, that he heard the evidence before the grand jury, and knows what people think about the case, are cause for reversal. — *Jackson v. State*, S. C. Ind., Jan. 5, 1889; 19 N. E. Rep. 330.

56. CRIMINAL LAW—Rape—Assault. —— Under an indictment for rape, a conviction may be had of assault with intent to commit rape, under Mansf. Dig. Ark. § 2288.—*Pratt v. State*, S. C. Ark., Jan. 12, 1889; 10 S. W. Rep. 233.

57. CRIMINAL LAW—Forgery—Indictment. —— An indictment charging the forgery of an indorsement upon a forged promissory note, which consisted in indorsing the name of the apparent maker upon a note payable to the maker's own order, charges an indictable offense. —*Commonwealth v. Welch*, S. J. C. Mass., Jan. 4, 1889; 19 N. E. Rep. 357.

58. CUSTOMS — Duties — Province of Jury. —— The question whether a particular importation, on which a duty has been imposed, is properly included in a particular name of a substance as employed in the tariff laws, is for the jury, and not the court. — *Weilbacher v. Merritt*, U. S. C. C. (N. Y.), Oct. 29, 1888; 37 Fed. Rep. 85.

59. DAMAGES—Evidence.——The plaintiff in this case testified that she was a widow and had six children: *Held*, this testimony was immaterial and irrelevant to the issue, but, inasmuch as the damages are not in excess of what was fully warranted, it is not a reversible error.— *Moore v. City of Huntington*, W. Va. Ct. App., Dec. 15, 1888; 8 S. E. Rep. 512.

60. DEDICATION — Public Use. —— Sufficiency of evidence showing dedication of land for public use.— *Atty. Gen. v. Tarr*, S. J. C. Mass., Jan. 3, 1889; 19 N. E. Rep. 358.

61. DEEDS—Description—Parol Evidence. ——It may be shown by parol, in an action at law, that by "Mercy A. Andrews," described as grantee in a deed, was meant "Melissa A. Andrews," the person producing the deed, and to whom it was delivered on its execution. — *Andrews v. Dyer*, S. J. C. Me., Dec. 22, 1888; 16 Atl. Rep. 405.

62. DEED — Construction. —— A purchaser of a life-estate at execution sale agreed with the debtor's wife to hold the same in trust for her and her children, and to convey to her and her children on reimbursement of expenses. After payment he conveyed by deed to the debtor and his wife, but the children were not named as parties in the deed: *Held*, that the wife held a life-estate in the life-estate of her husband, with remainder to her children. — *Merriwether v. Merriwether*, S. C. Ky., Dec. 18, 1888; 10 S. W. Rep. 272.

63. DEED—Sufficiency of Description. —— A sheriff's deed, though in itself too definite in its description of land conveyed, but which refers for more specific description to a recorded deed to the same land, when supplemented by the testimony of a surveyor, is sufficient.—*Whight v. Lassiter*, S. C. Tex., Nov. 2, 1888; 10 S. W. Rep. 295.

64. DEMURRER—Appeal—Record.——When a demurrer to an answer is overruled, and plaintiff elects to stand on the ruling, he must so state, and have the fact shown of record.—*Seippel v. Blake*, S. C. Iowa, Jan. 17. 1889; 41 N. W. Rep. 199.

65. DESCENT AND DISTRIBUTION—Advancements.—— Where certain heirs had received slaves as an advancement in the years 1859, and 1861, it was proper in December, in 1864, in allowing slaves, to an heir who had received none to allot them as of the value of 1861. —*West v. Jones*, Va. Ct. App., Jan. 10, 1889; 8 S. E. Rep. 468.

66. DIVORCE—Adultery.——*Held*, not in itself a cause for divorce for the wife to charge the husband with adultery. — *McAllister v. McAllister*, S. C. Tex., Nov. 9, 1888; 10 S. W. Rep. 294.

67. EJECTMENT — Foreclosure — Cumulative Remedy. ——Plaintiff who has obtained a valid title to land by foreclosure, and is in possession of a portion of it, can bring ejectment for the balance, and is not compelled to rely on a writ of assistance. — *Trope v. Kerns*, S. C. Cal., Dec. 24, 1888; 20 Pac. Rep. 82.

68. ELECTORS AND VOTERS—Contest—Burden of Proof. ——The burden of proof is on the plaintiff, when he seeks to introduce the ballots to overturn the official count, to show affirmatively that the ballots have not been tampered with, and that they are the genuine ballots cast by the voters. — *Fenton v. Scott*, S. C. Oreg., Dec. 20, 1888; 20 Pac. Rep. 95.

69. ELECTIONS AND VOTERS—Contests. ——Laws 16th Gen. Assem. Iowa, ch. 136, § 1, making women eligible to any school office in the State, is a repeal by implication of so much of Code Iowa, § 697, as requires, in election contests, the technical statement that the contestant is an elector. — *Brown v. Collum*, S. C. Iowa, Jan. 16, 1889; 41 N. W. Rep. 197.

70. EMINENT DOMAIN—Compensation—Evidence.—— When, in proceedings to assess the damages for land taken for a public park, the city assessor testified as to the value of the land, the court, in cross-examination, properly excludes a question as to the price at which he had assessed neighboring lots at about the time the lot in controversy was taken.— *Thompson v. City of Boston*, S. J. C. Mass., Jan. 5, 1889; 19 N. E. Rep. 406.

71. EMINENT DOMAIN — Public Use. —— Whether the use to which property sought to be taken under the exercise of eminent domain is public or private is a judicial question, subject to review by the appellate court. — *Pittsburg, etc. Co. v. Benwood Iron-works*, W. Va. Ct. App., Dec. 15, 1888; 8 S. E. Rep. 453.

72. EQUITY—Disinheriting Only Child.——Where the legal capacity of a grantor to make a deed is shown, and there is no fraud or undue influence established, he has the legal right to make an unjust, unnatural, or unreasonable conveyance of his property.—*Hale v. Cole*, W. Va. Ct. App., Nov. 24, 1888; 8 S. E. Rep. 516.

73. EQUITY — Practice. —— When a party's time to take testimony has expired without its being taken, the court may, on cause shown, grant relief by allowing it to be taken *nunc pro tunc*.— *Coon v. Abbott*, U. S. C. C. (N. Y.), Nov. 28, 1888; 37 Fed. Rep. 98.

74. EQUITY—Jurisdiction. —— The jurisdiction of an equity court is not entirely ousted by the happening of an event, subsequent to the commencement of an action, which precludes the exercise of the power to grant an injunction. — *Hohorst v. Howard*, U. S. C. C. (N. Y.), Dec. 1, 1888; 37 Fed. Rep. 97.

75. EQUITY—Jurisdiction— Establishment of Wills.—— Courts of equity in New York have no inherent jurisdiction of an action by a devisee in possession against the heir to establish the alleged will. — *Anderson v. Anderson*, N. Y. Ct. App., Jan. 15, 1889; 19 N. E. Rep. 427.

76. EQUITY—Mistake—Deed. —— Where aged and infirm parents, unable to read or write, and not understanding the English language, convey all their interest in the estate of a deceased son to two of his brothers, not understanding what they are doing, and not intending so to do, the conveyance will be set aside. *Weller v. Weller*, N. Y. Ct. App., Jan. 15, 1889; 19 N. E. Rep. 433.

77. EQUITY—Pleading—Amendment.——Under Comp. Laws N. M. § 1911, a complainant in a bill to set aside a deed, alleging it to have been made with intent to defraud creditors, should be allowed to file an amended bill charging that the deed was, though absolute in form, a mortgage in fact. — *Perea v. Callegos*, S. C. N. Mex., Jan. 1889; 20 Pac. Rep. 105.

78. ERROR—Writ of — Judgment — Supersedeas Bond. —— Where, on a writ of error from the superior court to review a cause brought on a writ of error from a a city court, the act authorizing writs of error from the city court to the superior court is held unconstitutional, it is not error for the city court to refuse to enter judgment on the *supersedeas* bond. — *Memmler v. Roberts*, S. C. Ga., Dec. 12, 1888; 8 S. E. Rep. 525.

79. EVIDENCE AS TO VALUE. —— On the question of value of personal property, evidence that it has no market value, where it does not appear that such property was ever offered for sale, is immaterial. — *Doran v. Eaton*, S. C. Minn., Jan. 14, 1889; 41 N. W. Rep. 244.

80. EXECUTION— Sale — Mistake. —— A mistake of a sheriff by which he sells land for more than the execution debt, interest, and costs, is waived by the execution debtor refusing to receive the excess, and directing its repayment to the purchaser. — *Thomas' Adm'r v. Thomas' Adm'x.*, Ky. Ct. App., June 14, 1888; 10 S. W. Rep. 282.

81. EXECUTION—Chattel Mortgage—Equity. —— Under Acts 21st Gen. Assem. Iowa, ch. 117, the creditor cannot so subject the property to his execution where the mortgage note is not due, although the mortgage authorizes the mortgagee to take possession of the property whenever he deems himself insecure. — *Deering v. Wheeler; Dotson v. Same*, S. C. Iowa, Jan. 17, 1889; 41 N. W. Rep. 198.

82. EXECUTION—Sale—Fraud. —— Facts sufficient to raise presumption of unfairness and fraud on execution sale and burden is on purchaser to show that debtor had notice of sale. — *Wright v. Dick*, S. C. Ind., Jan. 3, 1889; 19 N. E. Rep. 306.

83. FALSE IMPRISONMENT—Evidence—Burden of Proof. ——Under Pen. Code Cal. § 236, defining "false imprisonment" the imprisonment being proven, the law presumes it unlawful, and it is for the defendant to show that it was lawful.—*People v. McGrew*, S. C. Cal., Dec. 26, 1888; 20 Pac. Rep. 92.

84. FEDRAL COURTS—Corporations — Citizenship.—— Act. U. S. March 3, 1887, authorizes an action against a railroad corporation only in the State by whose laws it was created.—*Filli v. Delaware, L. & W. R. Co.*, U. S. C. C. (N. Y.), Nov. 26, 1888; 37 Fed. Rep. 65.

85. FORCIBLE ENTRY AND DETAINER — Evidence.—— Where, in an action under Rev. St. Ind. § 5237, evidence shows that plaintiffs voluntarily gave defendant possession of the building, and that when possession was demanded he refused to surrender the premises, and peaceably retained possession, a verdict for defendant may be directed, as the essential element of force in retaining the possession is wholly wanting. — *Gipe v. Cummins*, S. C. Ind., Jan. 11, 1889; 19 N. E. Rep. 4.

86. FRAUDS—Statute of— Agreement — In Open Court. ——An agreement made in open court, and acted on by the court, is not void under the statute of frauds, because not in writing. — *Savage v. Blanchard*, S. J. C. Mass., Jan. 4, 1889; 19 N. E. Rep. 396.

87. FRAUDULENT CONVEYANCES—Equity. —— A creditor cannot sue in equity to set aside as fraudulent a conveyance by his debtor, or one made by a third party at his instance, of property belonging to the debtor, until after judgment against the debtor, and a return of *nulla bona*, or after a proceeding against the property by attachment. — *Kyle v. O'Neil*, Ky. Ct. App., Jan. 15, 1889; 10 S. W. Rep. 275.

88. FRAUDULENT CONVEYANCES.——Pub. St. Mass. ch. 151, § 3, does not alter the rule that property fraudulently conveyed by a person who has since deceased, and whose estate is being administered, can be reached

only by proceedings instituted by the executor or administrator, and that, if he refuses, he may be removed, and another appointed. — *Putney v. Fletcher*, S. J. C. Mass., Jan. 2, 1889; 19 N. E. Rep. 370.

89. GARNISHMENT— Foreign Corporation. —— § 8145, How. Stat. Mich., providing for the commencement of suits against foreign corporations, does not apply to a garnishment suit.— *Milwaukee Bridge & Iron Works v. Brevoort*, S. C. Mich., Jan. 8, 1889; 41 N. W. Rep. 215.

90. GARNISHMENT—Judgment.—— There is no law for serving a copy of the summons of garnishment, making a return of service on the original, filing it in the office of the clerk of the superior court, and having that court render judgment against the garnishee for failing to to answer.—*West v. Harvey*, S. C. Ga., Dec. 22, 1888; 8 S. Rep. 450.

91. GARNISHMENT—Duty of Garnishee to Defend.—— Where plaintiff had knowledge of the pendency of a suit against him in another State, in which defendant was garnished as his debtor, and defendant's attorneys appeared for him and filed his affidavit of exemption, it was not defendant's duty to defend the suit.—*Chicago, etc. R. Co. v. Meyer*, S. C. Ind., Jan. 5, 1889; 19 N. E. Rep. 320.

92. GRAND JURY—Selection.—— Irregularities in selection of grand jury: *Held*, not sufficient cause for quashing indictment found by them.—*Crawford v. State*, S. C. Ga., Dec. 22, 1888; 8 S. E. Rep. 445.

93. HOMESTEAD—Abandonment—Evidence. —— Testimony that a homestead was rented for a year, on account of the ill-health of the wife, that there was no intention to leave the State, but always an intention to return to the homestead at the expiration of the lease, is sufficient, though contradicted as to intention, to sustain a finding that there was no abandonment.—*Carter Lumber Co. v. Clay*, S. C. Tex., Nov. 9, 1888; 10 S. W. Rep. 293.

94. HUSBAND AND WIFE—Antenuptial Debts of Wife.— Under Gen. Stat. Ky. ch. 52, art. 2, § 4, a husband is liable for his wife's antenuptial debts to the extent of property received by him from her, though such property before and after the marriage was exempt from seizure.—*Clark v. Miller*, Ky. Ct. App., Jan. 10, 1889; 10 S. W. Rep. 277.

95. HUSBAND AND WIFE — Antenuptial Agreement — Construction.——An antenuptial agreement in writing between parties owning real and personal property, the wife having a life estate in land, reciting the contemplated marriage, and stipulating that the survivor should take no interest in the estate of the deceased consort by descent or otherwise, but the estate should "descend to the heirs the same as it would if they had not married," bars the widow from claiming any interest in her deceased husband's estate, though under the law of Indiana the wife is the heir, in a limited sense, of her husband dying without issue.—*McNutt v. McNutt*, S. C. Ind., Dec. 11, 1888; 19 N. E. Rep. 115.

96. INJUNCTION—Contract—Adequate Remedy at Law. ——The breach of a contract by which defendant agreed to have her whole crop of s gar for two years refined at plaintiff's refinery may be adequately compensated by damages at law, and equity will not enjoin a violation of the agreement.—*Burdon, etc. Co. v. Leverich*, U. S. C. C. (La.), Nov. 15, 1888; 37 Fed. Rep. 67.

97. INJURY—Liability of State—Dedication. —— Where there was no legal dedication of a highway, and use of same was only by sufferance, the State cannot be held liable for injury to a person thereon who had knowledge of its dangers.—*Donohue v. State*, N. Y. Ct. App., Jan. 15, 1889; 19 N. E. Rep. 419.

98. INSURANCE—Assessment Life Insurance Companies —Deposit of Bonds.——Under act Va., May 18, 1887, only such assessment insurance companies are contemplated as raise the money to pay a loss caused by the death of a member by an assessment made after the death of such member upon those who survive him. —*Mutual Ben. Life Co. v. Mayre*, S. C. App. Va., Jan. 17, 1888; 8 S E. Rep. 481

99. INSURANCE—Mutual Companies — Policy Holder. ——When a person takes a policy in a mutual insurance company, he becomes a member, with the right to vote for directors; and though the directors are extravagant, incompetent, or careless of their trust, they are none the less his representatives.—*Koehler v. Beeber*, S. C. Penn., Jan. 7, 1889; 16 Atl. Rep. 354.

100. INTEREST—Unconscionable Rate — Enforcement. ——Under Pub. Stat. Mass , ch. 77, § 3, enforcement of a note made before the passage of Stat. 1888, ch. 388, will not be refused because the stipulated interest is unconscionable, there being no fraud.—*Lamprey v. Mason*, S. J. C. Mass., Jan. 2, 1889; 19 N. E. Rep. 350.

101. INTOXICATING LIQUORS—Nuisance.——Indictment, under Rev. Stat. Me., ch. 17, § 12, need not allege that the respondent knew the place to be a common nuisance.— *State v. Ryan*, S. J. C. Me., Dec. 28, 1888; 16 Atl. Rep. 406.

102. INTOXICATING LIQUORS—Illegal Sales.——An instruction that the fact that officials allowed defendant to carry on the business of a liquor seller and collected money from him for the privilege was no justification, is not erroneous under the evidence previously adduced.—*Hanlon v. State*, S. C. Ark., Jan. 19, 1889; 10 S. W. Rep. 265.

103. INTOXICATING LIQUORS—Illegal Sale—Servant.—— Where a master intrusts to a servant the management and control of his business of selling liquor, and he carries it on in the absence of his employer, both may be convicted of keeping and maintaining the tenement.— *Commonwealth v. Merriam*, S. J. C. Mass., Jan. 10, 1889; 19 N. E. Rep. 405.

104. INTOXICATING LIQUORS—Illegal Sale—Indictment. ——On an indictment for selling liquor to William Langford, Jr., a minor, the variance is not fatal, though the evidence shows that the sale was to William H. Langford.—*Ross v. State*, S. C. Ind., Jan. 10, 1889; 19 N. E. Rep. 451.

105. INTOXICATING LIQUORS—Illegal Sales—License.—— Under Acts Ark. 1883, p. 192, providing that one who sells liquor in territory where sales are prohibited may be convicted for a violation of the license law or of the local option law, the penalties of the license act are in force in prohibition districts.—*Mazzia v. State*, S. C. Ark., Jan. 19, 1889; 10 S. W. Rep. 257.

106. INTOXICATING LIQUORS—Illegal Sales—Lien.—— The lien created by § 18, ch. 35, Comp. Laws 1885, in favor of the State for the amount of fines and costs adjudged against a person for selling intoxicating liquor contrary to law, on premises leased to the convicted person, attaches to the leased premises, and operates upon them from the date of the conviction of the tenant.—*Snyder v. State*, S. C. Kan., Jan. 5, 1889; 20 Pac. Rep. 122.

107. INTOXICATING LIQUORS—Evidence.——Merchant without license selling brandy fruit was properly convicted of selling liquor without license.—*Musick v. State*, S. C. Ark., Jan. 12, 1889; 10 S. W. Rep. 225.

108. JUDGE—Special Judge—Appointment.——An appointment without writing, as required by law, of an attorney to try a case on the incompetency of the judge, confers no authority, when seasonably objected to.— *Greenwood v. State*, S. C. Ind., Jan. 8, 1889; 19 N. E. Rep. 335.

109. JUDGMENT — Default — Vacation.—— Facts considered and held not to justify an order opening a judgment (reversed on default) and allowing an answer on the ground that the judgment was recovered through defendant's mistake, inadvertence, or excusable neglect.—*Weymouth v. Gregg*, S. C. Minn., Jan. 14, 1889; 41 N. W. Rep. 243.

110. JUDGMENT—Assignment for Benefit of Creditors. ——The appellant recovered judgment against the insolvent, Dec. 9, 1887. Feb. 15, 1888, the insolvent made an assignment: *Held*, that the assignment did not affect the judgment, nor its lien on real estate.—*In re Church Mfg. Co.*, S. C. Minn., Jan. 14, 1889; 41 N. W. Rep. 241.

111. JUDGMENT— Foreclosure —Parties.——An equity of redemption owned by an assignee in bankruptcy, as such, is not barred by a foreclosure in which he is made

a party, and is served and appears in his individual name only, and in which his official character is in no wise mentioned.—*Landon v. Townshend*, N. Y. Ct. App., Jan. 15, 1889; 19 N. E. Rep. 424.

112. JUDGMENT—Lien.——Under Rev. Stat. Ind., § 608, the lien of the judgment, a transcript of which is filed in another county, is in force for 10 years after its rendition, and not 10 years from the time of filing the transcript.—*Brown v. Wuskoff et. al.*, S. C. Ind., Jan. 10, 1889; 19 N. E. Rep. 463.

113. JUDGMENT—Review.——An action to review a judgment must be brought in the court in which the original action was brought, and prosecuted to judgment.—*Jones v. Ahrens*, S. C. Ind., Jan. 9, 1889; 19 N. E. Rep. 334.

114. JUDICIAL SALES—Land Mortgaged by Husband—Abandoned Wife.——The husband of plaintiff's ancestor gave a mortgage in which she did not join, and the land was sold to defendant under a foreclosure suit to which she was not a party. The husband deserted her, and was living in adultery at her death: *Held*, under Rev. Stat. Ind., §§ 2497, 2508, that plaintiff could recover her interest in the land.—*Bradley v. Thixton*, S. C. Ind., Jan. 9, 1889; 19 N. E. Rep. 335.

115. JURY—Oath. —— Mere statements in the record are not to be regarded as attempts to give the form of the oath administered, and do not show that the jury were sworn "to well and truly try the matters submitted to them in the case in hearing, and a true verdict give according to the law and the evidence."—*Baldwin v. State of Kansas*, U. S. S. C., Jan. 14, 1889; 9 S. C. Rep. 193.

116. LIMITATION OF ACTIONS—Taxation.——Where title to the land is in dispute the statute of limitation did not begin to run until date of decree quieting title. — *Wood v. Curran*, S. C. Iowa, Jan. 21, 1889; 41 N. W. Rep. 214.

117. LIMITATION OF ACTIONS—Mortgage.——As to the running of statute of limitations in favor of a mortgagee guilty of fraud. — *Jacobs v. Snyder*, S. C. Iowa, Jan. 18, 1889; 41 N. W. Rep. 207.

118. LIMITATION OF ACTIONS — Judgment Liens — Exceptions.—— To avoid the bar of the statute of limitations in respect to the right to enforce the lien of a judgment, the creditor must bring his case within one of the exceptions declared in the statute, and he cannot, by parol evidence or otherwise, avoid such bar upon any ground not embraced in the statute. — *Reiley v. Clark*, W. Va., Ct. App., Nov. 24, 1888; 8 S. E. Rep. 509.

119. MANDAMUS—Abatement. —— Expiration of term of office of county clerk and election of successor does not abate application for *mandamus* requiring him to certify certain collection of fees. — *State v. Cole*, S. C. Neb., Jan. 3, 1889; 41 N. W. Rep. 245.

120. MASTER AND SERVANT — Negligence. —— Where plaintiff lawfully on construction train was injured by car starting with a jerk: *Held*, proper to charge that defendant was liable if the injury was caused by the negligence of its servants, although there may have been negligence on the part of plaintiff, unless she could, by the exercise of ordinary care, have avoided the consequences of defendant's negligence. — *Brown v. Sullivan*, S. C. Tex., Jan. 7, 1889; 10 S. W. Rep. 298.

121. MASTER AND SERVANT—Negligence. ——Question of contributory negligence of servant injured by machinery with which he was fully acquainted. — *Belle v. Detroit Leather Co.*, S. C. Mich., Jan. 11, 1889; 41 N. W. Rep. 216.

122. MASTER AND SERVANT— Negligence. —— Where plaintiff, has worked six months on a machine similar to one upon which he was injured, defendant was not negligent in not instructing plaintiff of the danger. — *Crowley v. Pacific Mills*, S. J. C. Mass., Jan. 2, 1889; 19 Pac. Rep. 344.

123. MECHANIC'S LIEN—Notice—Description.—— Sufficiency of description of property in notice required by the mechanic's lien act Mass. ch. 191, §§ 6, 8.—*Cleverly v. Mosely*, S. C. Mass., Jan. 3, 1889; 19 N. E. Rep. 394.

124. MECHANIC'S LIEN — Obligation of Contract. —— Pub. Acts Mich. 1887, No. 229, does not give a lien to laborers for work done, after its passage, on shingles sawed under a contract, made before its passage. — *Bourgette v. Williams*, S. C. Mich., Jan. 11, 1889; 41 N. W. Rep. 229.

125. MINES AND MINING—Patents — Fraudulent Representations. —— The United States may maintain a bill to cancel a patent for mining lands obtained by fraudulent representations as to the character of the land and the performance of the required work. — *United States v. Iron Silver Min. Co.*, U. S. S. C., Dec. 17, 1888; 9 S. C. Rep. 195.

126. MINES AND MINING—Location—Recording. —— A location notice of a mining claim, when recorded, is *prima facie* evidence of the necessary facts set forth. — *Jantzen v. Arizona Cooper Co.*, S. C. Ara., Jan. 19, 1889; 20 Pac. Rep. 93.

127. MORTGAGE—Foreclosure— Decree. —— A decree in proceeding for the sale of land under a mortgage, ordering the sale of certain real and leasehold estate, is not void because it also orders the sale of personal property. — *Bernstein v. Hobelman*, Md. Ct. App., Jan. 9, 1889; 16 Atl. Rep. 374.

128. MUNICIPAL CORPORATIONS—Powers.—— That part of the ordinance of the city of Minneapolis, which imposes a penalty upon "any person who commits any act of lewdness or indecency within the limits of said city," is void, because it is in excess of the power vested in the city council by the city charter. — *State v. Hammond*, S. C. Minn., Jan. 14, 1889; 41 N. W. Rep. 243.

129. MUNICIPAL CORPORATIONS— Public Work.——Construction of validity of ordinance under laws N. Y. 1873, § 91, providing for expenditures in public work in New York city. — *Phelps v. City of New York*, N. Y. Ct. App., Jan. 15, 1889; 19 N. E. Rep. 408.

130. MUNICIPAL CORPORATIONS— Defective Sewers.—— Though a municipal corporation cannot be compelled to exercise the powers conferred by its charter to grade streets and construct sewers, if it undertakes to make such improvements it is liable for any negligence or unskillfulness in the construction of the work. — *Town of Frostburg v. Hitchins*, Md. Ct. App., Jan. 9, 1889; 16 Atl. Rep. 380.

131. MUNICIPAL CORPORATIONS — Constitutional Law. —— Act. Pa. May 24, 1887, dividing the cities of the State into seven classes, for the purposes of government, and conferring substantially the same powers on the fourth to the seventh classes, is not founded on any manifest peculiarities in the latter classes, requiring legislation for each that would be useless or detrimental to the others; and is therefore in violation of Const. Pa. art. 3, § 7.—*Appeal of Ayars*, S. C. Penn., Jan. 7, 1889; 16 Atl. Rep. 356.

132. MUNICIPAL CORPORATIONS— Municipal Liens.—— Act. Pa. May 24, 1887, dividing the cities of the State into seven classes, etc., having been declared unconstitutional (*Appeal of Ayars*), a municipal lien entered and filed solely in accordance therewith is void. — *Berghaus v. City of Harrisburg*, S. C. Penn., Jan. 7, 1889; 16 Atl. Rep. 365.

133. MUNICIPAL CORPORATIONS —— *Certiorari* will lie to review the action of the district court in confirming special assessment by the board of public works of Duluth to defray expenses of local improvement. — *Sherwood v. Judge*, S. C. Minn., Jan. 11, 1889; 41 N. W. Rep. 234.

134. MUNICIPAL CORPORATIONS — Street Assessments. ——Where the board of public works of the city of St. Paul makes an assessment of benefits and damages to property resulting from a change of grade of a street, finding the benefits greater than the damages, and the property owner voluntarily pays the balance or difference collectible from him, he thereby acquiesces in the assessment. — *State v. District Court*, S. C. Minn., Jan. 11, 1889; 41 N. W. Rep. 235.

135. MUNICIPAL CORPORATIONS— Police Officers — Removal. —— Under a city charter, providing that the

mayor and aldermen shall have power to appoint police officers, and to remove them at pleasure, the power of removal is not confined to officers nominated by the mayor exercising it, but extends to officers nominated by his predecessors.— *Williams v. City of Gloucester*, S. J. C. Mass., Jan. 3, 1889; 19 N. E. Rep. 348.

136. NEGLIGENCE—Province of Jury. ——In an action for injuries received from a board thrown back from a circular saw operated by one of defendants, it is error to submit the case to the jury where plaintiff does not show how it happened that the board was thrown back. — *Frazier v. Lloyd*, S. C. Penn., Jan. 7, 1889; 16 Atl. Rep. 418.

137. NEGLIGENCE—Railroad Company. —— Question of negligence where party was killed at crossing where smoke over the track clouded the sight and where evidence was conflicting whether signal was sounded by defendant. — *Heaney v. Long Island, Ry. Co.*, N. Y. Ct. App., Jan. 15, 1889; 19 N. E. Rep. 422.

138. NEGLIGENCE — Snow from Roofs. —— One who constructs a building so near to a street that ice or snow will fall from it in the ordinary course of things, endangering travelers who are rightfully in the highway, is liable for injuries so received, although the building is of no unusual construction. — *Smethurst v. Proprietors Ind. Cong. Church*, S. J. C. Mass., Jan. 3, 1889; 19 N. E. Rep. 387.

139. NEGLIGENCE — Joint Tort feasors. —— Where mail carriers unnecessarily obstruct the platform of a railway station causing injury to one who recovers therefor, in action against the railway company the latter is not a joint wrong-doer so far as to prevent recovery from the mail carrier of the amount paid. — *Old Colony Railway v. Slivens*, S. J. C. Mass., Jan. 4, 1889; 19 N. E. Rep. 372.

140. NEGLIGENCE—Evidence.——Where the evidence is conflicting as to whether the train stopped sufficiently long to enable plaintiff, an old woman, to alight, and whether she used proper dilligence in alighting, an order refusing a new trial will not be reversed. — *Atlanta & W. P. R. Co. v. Smith*, S. C. Ga., Dec. 22, 1888; 8 S. E. Rep. 446.

141. NEGLIGENCE—Passenger— Injury. —— Question of negligence where passenger was killed in going from car to car. — *State v. Me. Cent. Ry.*, S. J. C. Me., Dec. 10, 1888; 16 Atl. Rep. 368.

142. NEGLIGENCE — Passenger. —— A passenger who gets off on the track side, instead of getting off on the side where passengers usually alight, is properly nonsuited, in an action for injuries received by a passing train. — *Morgan v. Camden & A. R. Co.*, S. C. Penn., Jan. 21, 1889; 16 Atl. Rep. 353.

143. NEGLIGENCE—Injury.——Evidence not sufficient to show negligence on part of defendant railroad company.—*Ogden v. Penn. R. Co.*, S. C. Penn., Jan. 21, 1889; 16 Atl. Rep. 353.

144. NEGLIGENCE — Driving at Immoderate Speed — Evidence.——In an action to recover damages for injuries inflicted by the defendant in negligently riding his horse upon plaintiff, evidence that there was more travel upon that street than upon any other street in the city was competent. — *Stringer v. Frost*, S. C. Ind., Jan. 8, 1889; 19 N. E. Rep. 331.

145. NEGOTIABLE INSTRUMENT—Conversion. ——Payee of note not liable on his indorsement of same where he left it with plaintiff who wanted to look up the solvency of the maker and converted same to his own use. — *Haas v. Sackett*, S. C. Minn., Jan. 18, 1889; 41 N. W. Rep. 287.

146. NEGOTIABLE INSTRUMENTS—Payment — Renewal. ——Where a joint note is executed for a debt, and at its maturity a partial payment is made, and a new note given for the balance, which is invalid as to one of the makers on account of a material alteration, a recovery can be had against the latter on the original cause of action, the old note being produced at the trial. — *Owen v. Hall*, Md. Ct. App., Jan. 10, 1889; 16 Atl. Rep. 376.

147. NEGOTIABLE INSTRUMENT—Indorsement—Notice. —— Sufficiency of notice of non-payment of promissory note to bind indorser.—*Wachusett Nat. Bank v. Fairbrother*, S. J. C. Mass., Jan. 2, 1889; 19 N. E. Rep. 345.

148. NOVATION — Contract. —— Question under the facts whether plaintiff's contract was with board of education or carpenter employed by them, through whom plaintiff was required to draw his pay. — *Dean v. Board of Education*, S. C. Mich., Jan. 11, 1889; 41 N. W. Rep. 218.

149. NUISANCE—Action for Damages— Parties. —— It is not necessary to the right of action given by St. Mass. 1887, ch. 348, for maliciously erecting a fence more than six feet high for the purpose of annoyance, that the owner should be in actual occupation. — *Smith v. Morse*, S. J. C. Mass., Jan. 5, 1889; 19 N. E. Rep. 393.

150. PARTNERSHIP—Minor Partner — Dissolution.—— A copartnership of which a minor is a member, and to the capital of which he has contributed, may, after its dissolution, upon the petition of the adult member be declared insolvent, and a warrant may be issued against the firm's property. —*Pelletier v. Couture*, S. J. C. Mass., Jan., 3, 1889; 19 N. E. Rep. 400.

151. PARNERSHIP—Contracts.——If a written contract, not required to be under seal, within the scope of the partnership business, be executed under seal by one partner in behalf of the firm, the seal may be rejected as surplusage, and the instrument treated as the parol contract.—*Sterling v. Bock*, S. C. Minn., Jan. 11, 1889; 41 N. W. Rep. 236.

152. PENAL ACTIONS — Fraudulent Tax-list. —— One who gives to the assessor a false and fraudulent tax-list is liable to the penalty prescribed by Rev. St. Ind. 1881, § 6339, and must be prosecuted in a penal action, in the mode prescribed therein, and not by indictment. — *Durham v. State*, S. C. Ind., Jan. 10, 1889; 19 N. E. Rep. 329.

153. PLEADING— Purchase —Public Lands. —— Sufficiency of averment under Pol. Code Cal. § 3498, in action to determine the right to purchase land from the State. —*Riddell v. Mullen*, S. C. Cal., Dec. 26, 1888; 20 Pac. Rep. 91.

154. PLEADING— Complaint. —— *Held*, that bill alleging execution of contract for postponement of the completion of contract showed no such postponement when plaintiff's name was not signed to the writing though it bore the word accepted and where there was no averment of acceptance.—*Wiley v. San Pedro, etc. Co.*, S. C. N. Mex., Jan. 1888; 20 Pac. Rep. 115.

155. POOR DEBTORS — Examination. —— Under Rev. St. Me. ch. 113, § 28, a justice who has heard and adjudicated upon one application is not disqualified to hear a second application, under the same execution. — *McGilvery v. Staples*, S. J. C. Me., Dec. 22, 1888; 16 Atl. Rep. 404.

156. POWER OF ATTORNEY — Construction. —— *Held*, that the wording of power of attorney was not ambiguous so as to permit introduction of parol evidence. — *Redd v. Commonwealth*, S. C. Va., Jan. 17, 1889; 8 S. E. Rep. 490.

157. PRACTICE IN CIVIL CASES—Summons.— Under the statute of Oregon: *Held*, that the service was invalid, and the decree of sale thereon null and void, because the return did not show that the service of the summons was made at the defendant's usual place of abode in the State, in whatever county it might be, but only at his usual place of abode in Linn county.—*Swift v. Meyers*, U. S. C. C. (Oreg.), Dec. 24, 1888; 37 Fed. Rep. 37.

158. PRACTICE IN CIVIL CASES— Findings—Appeal.—— Under Code Iowa, § 2743, findings of fact and law must be made prior to or contemporaneous with the judgment, and it is irregular for the court to enter judgment and file his findings at a subsequent day of the term. — *Hodges v. Gochyman*, S. C. Iowa, Jan. 16, 1889; 41 N. W. Rep. 195.

159. PRINCIPAL AND SURETY — Indemnity. —— The sureties on a bond for the delivery of property levied on cannot be required to surrender to the judgment creditor the proceeds of property placed in their hands

to indemnify them, until it is shown that they have been relieved from liability. — *Cheatham v. Seawright*, S. C. S. Car., Jan. 3, 1899; 8 S. E. Rep. 526.

160. PUBLIC LANDS—Land Grants— Reservations.——On bill to set aside the patent to even-numbered sections of land granted to defendant railway company, the objection that the sections were not the subject of grant because of the New York Indian reservation under the treaty of 1838 (7 St. U. S. 550) will not be considered. — *United States v. Missouri, K. & T. Ry. Co.*, U. S. C. C. (Kan.), Oct. 31, 1888; 37 Fed. Rep. 68.

161. RAILROAD COMPANIES—Consolidation— Taxation. —— Act. Ky. Feb. 22, 1871, incorporating the K. C. R. Co., and investing it with "all the powers, privileges, rights, immunities, and franchises" of the C & L. R. Co., whose road it had bought at judicial sale, did not grant it the commutation of taxation conferred by act on the C. & L. R. Co., nor was that right transferred by the judicial sale.—*Kentucky Cent R. Co. v. Commonwealth*, Ky. Ct. App., Dec. 13, 1888; 10 S. W. Rep. 269.

162. RAILROAD COMPANIES — Grade Crossings — Compensation. —— Under Rev. St. Ind. 1881, granting to a railroad company power "to cross, intersect, join, and unite its railroad with any other railroad before constructed," and providing that, "if the two corporations cannot agree upon the amount of compensation, or the points or manner of such crossings and connections, the same shall be ascertained and determined by commissioners," etc., the petition must allege that an effort has been made to agree upon the amount of compensation, the points, and the manner of crossing. — *Lake Shore, etc. Co., v. Cincinnati, etc. Ry. Co.*, S. C. Ind. Dec. 19, 1888; 19 N. E. Rep. 440.

163. RAILROAD COMPANIES—Transfer of Franchise.—— Under Act Cong. March 3, 1871, the T. & P. Ry., has no authority to transfer its franchise to another company and retain merely an easement over the right of way. — *South Pac. Ry. Co. v. Esquibal*, S. C. N. Mex., Jan. 1889; 20 Pac. Rep. 109.

164. RAILROAD COMPANIES—Bonds—Liabilities to Company Creditors. —— The undertaking of mortgage bondholders of a corporation who subscribe to its debenture bonds, agreeing to pay specified portions of their subscription as called for, is in effect an agreement to loan the corporation money, and receive the bonds as security, and is not analogous to an unpaid subscription to capital stock. — *Pettibone v. Toledo, etc. Co.*, S. J. C. Mass., Jan. 2, 1889; 19 N. E. Rep. 337.

165. RAILROAD COMPANIES—Recital in Bond.——A recital in a county bond, "authorized by an act entitled 'An act to incorporate the Mo. & Miss. R. R. Company, approved Feb. 20, 1865,'" does not estop the bondholder from showing that the bond was in fact issued under a general law.—*Ninth Nat. Bank v. Knox County*, U. S. C. C. (Mo.), Sept. 11, 1888; 37 Fed. Rep. 75.

166. REAL ESTATE AGENTS—Pleading.——In an action by a real estate agent, for his commission on a sale, a denial, in the answer, of the agreement authorizing him to sell, will not admit proof that while making the sale he was also acting as agent for the buyer in making the purchase.—*MacFee v. Horan*, S. C. Minn., Jan. 14, 1889; 41 N. W. Rep. 239.

167. RESCISSION OF CONTRACT— False Representations —Value.——Though relied upon, false representations as to value of land is no ground for rescission, in the absence of actual fraud or deceit.—*Lucas v. Cripper*, S. C. Iowa, Jan. 17, 1889; 41 N. W. Rep. 205.

168. REFERENCE—Practice. —— Where a referee fails to give notice to the opposing parties of the time and place of announcing his findings of fact and law, as required by How. St. Mich. § 7382, the court may on report being made, refer the case back for the purpose of separately stating the conclusions of law and fact, and of giving an opportunity to settle a bill of exceptions.—*Runnels v. Moffat*, S. C. Mich., Jan. 11, 1889; 41 N. W. Rep. 224.

169. RELIGIOUS SOCIETIES—Lease— Trusts. —— Contributions were taken up and land was bought, and a meeting-house built, a church formed, and the proprietors formed a corporation under St. Mass., 1840. ch. 62 and the committee holding the land conveyed to the corporation by a simple deed, expressing no trust: *Held*, that a bill would not lie by persons suing in behalf of the church, to set aside a lease by the corporation of the meeting-house, no trust arising in favor of the church against the corporation.—*Warner v. Bowdoin Square Baptist Soc.*, S. J. C. Mass., Jan. 5, 1889; 19 N. E. Rep. 403.

170. REPLEVIN—Possessory Warrant.——Under Code Ga. § 4082, one who lends a chattel without any fraudulent misrepresentation by the borrower, is not entitled to a possessory warrant for its recovery.—*Odom v. Trantham*, S. C. Ga., Dec. 22, 1888; 8 S. E. Rep. 442.

171. RES ADJUDICATA—Adverse Possession.——Where, in an action to recover possession of real property, the complaint tenders an issue on the title of the plaintiff, basing his right to the possession upon such title, a judgment in his favor upon the merits is conclusive upon the question of title at that time between the parties and their privies.—*Bazille v. Murray*, S. C. Minn., Jan. 18, 1889; 41 N. W. Rep. 238.

172. SALES—Action for Price — Payment by Void Note. —— Defendant purchased goods of plaintiffs in the name of a corporation, which in fact had no existence, giving therefore what purported to be the note of the corporation: *Held*, that on discovery of the non-existence of the supposed corporation, plaintiffs could treat the note as a nullity, and sue defendant for goods sold. —*Montgomery v. Forbes*, S. J. C. Mass., Jan. 2, 1889; 19 N. Rep. 342.

173. SET-OFF—Counties—States.——On an application for a *mandamus* to compel payment by a county of the amount due the State, a claim by it against the State, which has not been submitted to the State's auditing officers, cannot be set-off.— *Aplin v. Board of Supervisors*, S. C. Mich., Jan. 11, 1889; 41 N. W. Rep. 223.

174. SPECIFIC PERFORMANCE—Evidence. —— Specific performance of an oral agreement to convey lands cannot be decreed on a finding of fact that the trial court is unable to determine from the evidence what the terms of the agreement are. — *Burke v. Ray*, S. C. Minn., Jan. 14, 1889; 41 N. W. Rep. 240.

175. SPECIFIC PERFORMANCE.—— It is no defense to a a bill for the specific performance of defendant's agreement to give a quitclaim deed for a strip of land that the public are using it as a highway, where it appears that the record title is in defendant, and that no deed or written dedication of the same has been made. — *Canham v. Mooney*, S. C. Mich., Jan. 11, 1889; 41 N. W. Rep. 223.

176. STATUTES—Validity—Removal of Causes.——The act passed March 19, 1887 (84 Laws, 129), amending § 550, Rev. St., was duly adopted by the general assembly, and is a valid law. — *State v. Rabbitts*, S. C. Ohio, Jan. 8, 1889; 19 N. E. Rep. 437.

177. STREET RAILROADS—Franchises — Taxation.—— The acts N. Y, 1860, ch. 512, and act 1866, ch. 883, create different franchises, and defendant, to avail itself of them, must pay the license fee prescribed by the first act, and also the percentage called for by the second.— *Mayor, etc. Co. v. Dry-Dock, etc. Co.*, N. Y. Ct. App., Jan. 15, 1889; 19 N. E. Rep. 420.

178. SWAMP LANDS—Contracts—Consideration.——Acts 5th Gen. Assem. Iowa, ch. 110, § 1, does not render invalid a contract made by a county with attorneys, by which, in return for services rendered by the latter in securing and perfecting the title to swamp lands, it was stipulated that a portion of the lands should be conveyed to them when the title to the whole should be acquired.— *Emmet County v. Allen*, S. C. Iowa, Jan. 17, 1889; 41 N. W. Rep. 201.

179. TAXATION—State Lands—Payment. —— Land set apart by the State for the contractor, as payment for the construction of the new capitol of Texas, to be conveyed to him from time to time when earned in the progress of the work, is not subject to taxation under

Rev. St. Tex. art. 4691. — *Taylor v. Robinson*, S. C. Tex., Dec. 21, 1888; 10 S. W. Rep. 245.

180. TOWNS—Debts — Taxation. —— Construction of Rev. St. Ind. 1881, §§ 6006, 6007, restricting the incurring of debts by trustees of township.—*Jefferson School Tp. v. Litton*, S. C. Ind., Jan. 5, 1889; 19 N. E. Rep. 323.

181. TRESPASS — Removal of Crops by Tenant. —— Where, by contract between landlord and cropper, each was to have one-half of the crop, but the whole was to be the property of the former, and under his control, until he received both his half and pay for all his advances, it was not a criminal trespass by the cropper, while the cotton was in his possession and before the expiration of the year, to remove some of it from the premises and sell it.—*Padgett v. State*, S. C. Ga., Dec. 22, 1888; 8 S. E. Rep. 445.

182. TRESPASS. —— Entry though peaceable and for the purpose of seizin under chattel mortgage but followed by some damage is no justification for trespass on real estate.— *Concanon v. Boynton*, S. C. Iowa, Jan. 19, 1889; 41 N. W. Rep. 213.

183. TRESPASS TO TRY TITLE—Evidence. —— Upon trial of an action for land patented by virture of a certificate issued to one S K, the theory of the defense being that the plaintiffs are heirs of an S K other than the one to whom the certificate was in fact granted, it is error to refuse to charge that the legal title to the land was vested in the person to whom the certificate was in fact granted; that, if the jury believe from the evidence that there were two men of that name, they should determine to which one the certificate was granted. — *Greening v. Keel*, S C. Tex., Dec. 4, 1888; 10 S. W. Rep. 255.

§ 184. TRESPASS TO TRY TITLE— Pleading. ——Plaintiff in trespass to try title can only recover on his superior title existing at the institution of the action. — *Collins v. Ballow*, S. C. Tex., Dec. 18, 1888; 10 S. W. Rep. 248.

185. TROVER AND CONVERSION— Damages — Evidence. —— The value of four bales of cotton at Rome, Ga., cannot be inferred from the value of six bales (including these four) at Cincinnati, Ohio, nor from the value of the other two bales at Rome; it not appearing that these two were of like weight and quality as the four in question.—*Simpson v. Cincinnati, N. O. & T. P. Ry. Co.*, S. C. Ga., Dec. 19, 1888; 8 S. E. Rep. 524.

186. TROVER AND CONVERSION—Removal of Goods.—— Where one hires a room in a house, and puts goods therein, leaving the room unfastened, a job teamster is not liable for conversion, who in good faith removes the goods under the direction of the owner of the house, and delivers them to the latter.—*Gurley v. Armstead*. S. J. C. Mass., Jan. 3, 1889; 19 N. E. Rep. 389.

187. TROVER AND CONVERSION—Lost Goods. —— Liability of finder of lost goods, deposited in the earth for safe keeping, for trover and conversion. — *Sovern v. Yoran*, S. C. Oreg., May 7, 1888; 20 Pac. Rep. 100.

188. TROVER AND CONVERSION — Note — Broker. —— Broker who refuses to return note sent him for sale or pay draft for it, is liable for conversion. — *Security Bank v. Fogg*, S. J. C. Mass., Jan. 3, 1889; 19 N. E. Rep. 378.

189. TRUST— Enforcement at Law. —— An action at law can be brought to recover money held under a parol trust, when the trust has so far been performed that nothing remains to be done by the trustee but to distribute the money. — *Chase v. Perley*, S. J. C. Mass., Jan. 3, 1889; 19 N. E. Rep. 396.

190. TRUSTS—Deeds—Construction. ——Property was conveyed in trust for the separate use of a married woman during her life, and after her death for the support of her husband, remainder over on his death: *Held*, that the trust was personal, and was extinguished by a sale of the husband's interest in insolvency proceedings after the wife's death. — *Thompson v. Ballard*, Md. Ct. App., Jan. 9, 1889; 16 Atl. Rep. 378.

191. USURY. —— *Held*, under the evidence that the contract had none of the element of usury. — *Myers v. Roller*, S. C. Va., Jan. 10, 1889; 8 S. S. E. Rep. 483.

192. USURY— Burden of Proof. —— Where one enters into a contract, in consideretion of a loan, to deliver certain cotton, to be sold on commission, which contract is usurious if the borrower has no reasonable expectation that he can comply with the terms, the burden is on him to show that in making the contract he had no such expectation.—*Smith v. Lehman*, S. C. Ala., Dec. 19, 1888; 5 South. Rep. 204.

193. USURY—Advances— Commission Merchants.—— A commission merchant advanced to a planter money, taking his note therefor due in the next cotton season, with interest from date, with an additional agreement that for every $10 loaned, the planter would deliver to the merchant one bale of cotton for storage and sale on commission: *Held*, that where there was a reasonable expectation that the planter could deliver the cotton, the contract was not usurious.—*Harmon v. Lehman*, S. C. Ala., Dec. 18, 1888; 5 South. Rep. 197.

194. VENDOR AND VENDEE—Deed.——Where property is sold title subject to approval of A and the latter disapproved it and vendee refused to accept deed: *Held*, that vendor could thereupon treat the contract as at an end.—*Dean v. Hitchings*, S. C. Minn., Jan. 14, 1889; 41 N. W. Rep. 240.

195. WATER-COURSE—Diversion. —— *Held*, under the facts that defendant had not the right to extend his tile drain so as to divert water from complainant's land.—*Hilliker v. Coleman*, S. C. Mich., Jan. 11, 1889; 41 N. W. Rep. 220.

196. WILLS—Construction—Trusts. —— Testatrix left all her estate to a trustee, to pay the income to her sister during her life, and on the death of her sister the property to a charity, and to pay the net income of the real estate to her brother during his life, and on his death to divide the real estate among his children, or failing any, to transfer it to the same charity: *Held*, that the will created two separate trusts. — *Carruth v. Carruth*; *Reed v. Same*, S. J. C. Mass., Jan. 7, 1889; 19 N. E. Rep. 369.

197. WILLS — Construction. —— At a common law a devise of real estate, in order to convey the fee, must contain words of inheritance or perpetuity; but under the statutes of this State such words are not necessary to convey the fee, and every devise of land is to be construed to convey all of the estate of the devisor therein, unless it shall clearly appear by the will that the devisor intended to convey a less estate. — *Little v. Giles*, S. C. Neb., Jan. 3, 1889; 41 N. W. Rep. 186.

198. WILLS—Undue Influence — Declarations of Testator.——The declarations of a testator, made within a reasonable time before and after the execution of a will, are admissible to show the condition of testator's mind on an issue raised upon the exercise of fraud and undue influence, although such declarations have no force to establish the fact of undue influence. — *Herster v. Herster*, S. C. Penn., Jan. 7, 1889; 16 Atl. Rep. 342.

199. WILLS—Construction — Trusts. —— A will gave testator's wife all his property, and named her executrix, and proceeded: "If she find it always convenient to pay my sister C B the sum of $300 a year, I wish it to be done:" *Held*, that a trust was created, contingent only on the widow's "convenience," and not dependent on her volition. — *Phillips v. Phillips*, N. Y. Ct. App., Jan. 15, 1889; 19 N. E. Rep. 411.

200. WILLS—Construction. —— A devise to A for life, at her death to pass to B, if living, and, if not, to his widow for life or widowhood, and then to the heirs of B if any be living, and, if not, remainder over, vests a remainder in B at testator's death, though the enjoinment is postponed until the termination of the particular estate.—*Hoover v. Hoover*, S. C. Ind., Jan. 11, 1889; 19 N. E. Rep. 468.

201. WILL—Construction.——A devise in trust to the use of A for life, then to the use of B for life, and then to transfer and convey the property to B's children and their heirs, creates an equitable life estate in A, and in B if he survives A, with a remainder which vests in the children at the testator's death.—*Loring v. Carnes*, S. J. C. Mass., Jan. 2, 1889; 19 N. E. Rep. 343.